

COMPLIANCE REVIEW REPORT

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Compliance Review Unit
State Personnel Board
July 24, 2021

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of the California Department of Corrections and Rehabilitation (CDCR) personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

| Area | Severity | Finding |
|------------------------------|---------------|--|
| Examinations | Very Serious | Equal Employment Opportunity Questionnaires Were Not Separated From Applications ¹ |
| Examinations | In Compliance | Permanent Withhold Actions Complied with Civil Service Laws and Board Rules |
| Appointments | Very Serious | Unlawful Appointment |
| Appointments | Serious | Probationary Evaluations Were Not Provided for all Appointments Reviewed and Those That Were Provided Were Untimely ² |
| Appointments | Technical | Appointment Documentation Was Not Kept for the Appropriate Amount of Time |
| Equal Employment Opportunity | Very Serious | Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period |
| Personal Services Contracts | Serious | Unions Were Not Notified of Personal Services Contracts |

¹ Repeat finding. The January 26, 2018, CDCR Compliance Review Report identified 144 EEO Questionnaires that were not separated from their respective applications.

² Repeat finding. The January 26, 2018, CDCR Compliance Review Report identified 25 missing probationary reports in 23 of the 251 appointment files reviewed.

| Area | Severity | Finding |
|----------------------|---------------|--|
| Mandated Training | Very Serious | Ethics Training Was Not Provided for All Filers ³ |
| Mandated Training | Very Serious | Sexual Harassment Prevention Training Was Not Provided for All Supervisors ⁴ |
| Compensation and Pay | In Compliance | Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Very Serious | Alternate Range Movements Did Not Comply with Civil Service Laws, Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | In Compliance | Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines |
| Compensation and Pay | Very Serious | Incorrect Authorization of Bilingual Pay |
| Compensation and Pay | Very Serious | Incorrect Authorization of Pay Differentials |
| Compensation and Pay | Very Serious | Incorrect Authorization of Out-of-Class Pay |
| Leave | Serious | Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period |
| Leave | Serious | Department Did Not Properly Monitor Time Worked for All Positive Paid Employees |
| Leave | Serious | Positive Paid Employees' Time and Attendance Records Were Not Properly Retained and/or Documented |
| Leave | Serious | Administrative Time Off Was Not Properly Documented |

³ Repeat finding. The January 26, 2018, CDCR Compliance Review Report identified 3,326 existing filers and 430 new filers not receiving ethics training within 6 months of appointment.

⁴ Repeat finding. The January 26, 2018, CDCR Compliance Review Report identified 581 existing supervisors and 101 new supervisors not receiving sexual harassment prevention training within 6 months of their appointment.

| Area | Severity | Finding |
|--------|---------------|---|
| Leave | Technical | Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed |
| Leave | Very Serious | Incorrect Application of State Service and Leave Transactions |
| Policy | In Compliance | Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | In Compliance | Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines |
| Policy | Serious | Performance Appraisals Were Not Provided Timely to All Employees |

BACKGROUND

The CDCR enhances public safety and promotes successful community reintegration through education, treatment and active participation in rehabilitative and restorative justice programs. The mission of the CDCR is to facilitate the successful reintegration of the individuals in its care back to their communities; equipping these individuals with the tools to be drug-free, healthy, and employable members of society by providing education, treatment, rehabilitative, and restorative justice programs, all in a safe and humane environment.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing the CDCR's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes⁵. The primary objective of the review was to determine if the CDCR's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

⁵ Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

A cross-section of the CDCR's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CDCR provided, which included examination plans, examination bulletins, job analyses, and scoring results. The CRU also reviewed the CDCR's permanent withhold actions documentation, including Withhold Determination Worksheets, State applications (STD. 678), class specifications, and withhold letters.

A cross-section of the CDCR's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CDCR provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports. Additionally, the CDCR did not make any additional appointments during the compliance review period.

The CDCR's appointments were also selected for review to ensure the CDCR applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CDCR provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay: hire above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

The review of the CDCR's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee.

The CDCR's PSC's were also reviewed.⁶ It was beyond the scope of the compliance review to make conclusions as to whether the CDCR's justifications for the contracts were legally sufficient. The review was limited to whether the CDCR's practices, policies, and procedures relative to PSC's complied with procedural requirements.

⁶If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

The CDCR's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors, managers, and CEAs were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the CDCR's Leave Activity and Correction Certification forms to verify that the CDCR created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the CDCR's units in order to ensure they maintained accurate and timely leave accounting records. Part of this review also examined a cross-section of the CDCR's employees' employment and pay history, state service records, and leave accrual histories to ensure employees with non-qualifying pay periods did not receive vacation/sick leave and/or annual leave accruals or state service credit. Additionally, the CRU reviewed a selection of the CDCR employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CDCR positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

Moreover, the CRU reviewed the CDCR's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CDCR's policies and processes adhered to procedural requirements.

On April 16, 2021, an exit conference was held with the CDCR to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDCR's revised written response on May 25, 2021, which is attached to this final compliance review report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the

examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, October 1, 2019, through March 31, 2020, the CDCR conducted 108 examinations. The CRU reviewed 30 of those examinations, which are listed below:

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|--|-------------------|--|-----------------|-------------|
| Building Maintenance Worker, Correctional Facility | Departmental Open | Education and Experience ⁷ | Continuous | 78 |
| Catholic Chaplain | Departmental Open | Education and Experience | Continuous | 3 |
| Career Executive Assignment (CEA) A, Chief Information Officer, Administrative Services Branch, Division of Juvenile Justice | CEA | Statement of Qualifications ⁸ (SOQ) | 2/24/20 | 14 |
| CEA B, Assistant Deputy Director, Program Operations, Division of Adult Institutions | CEA | SOQ | 1/28/20 | 3 |

⁷ In an Education and Experience examination, one or more raters reviews the applicants' STD. 678 application forms, and scores and ranks them according to a predetermined rating scale that may include years of relevant higher education, professional licenses or certifications, and/or years of relevant work experience.

⁸ In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|---|--------------------------------|---|-----------------|-------------|
| CEA B, Associate Director, Integrated Disability Management and Occupational Health Program | CEA | SOQ | 12/16/19 | 4 |
| CEA B, Deputy Director, Office of Audits and Court Compliance | CEA | SOQ | 2/13/20 | 8 |
| CEA B, Deputy Director, Youth Development and Transition Services, Division of Juvenile Justice | CEA | SOQ | 10/31/19 | 13 |
| Correctional Counselor III | Departmental Promotional | Written ⁹ | 12/6/19 | 345 |
| Correctional Lieutenant | Multi-Departmental Promotional | Written | 10/11/19 | 1,904 |
| Correctional Sergeant | Departmental Promotional | Written | 2/28/20 | 5,189 |
| Electrician III, Correctional Facility | Departmental Open | Education and Experience | Continuous | 8 |
| Equipment Maintenance Supervisor, Correctional Facility | Departmental Open | Education and Experience | Continuous | 12 |
| Fire Captain, Correctional Institution | Departmental Open | Written | 3/20/20 | 80 |
| Laundry Supervisor II, Correctional Facility | Departmental Open | Education and Experience | Continuous | 6 |
| Major, Youth Authority | Departmental Promotional | Qualification Appraisal Panel (QAP) ¹⁰ | 11/1/19 | 21 |
| Painter II, Correctional Facility | Departmental Open | Education and Experience | Continuous | 23 |
| Parole Agent I, Youth Authority | Departmental Promotional | QAP | 12/13/19 | 118 |

⁹ A written examination is a testing procedure in which candidates' job-related knowledge and skills are assessed through the use of a variety of item formats. Written examinations are either objectively scored or subjectively scored.

¹⁰ The Qualification Appraisal Panel interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

| Classification | Exam Type | Exam Components | Final File Date | No. of Apps |
|--|--------------------------|--------------------------|-----------------|-------------|
| Plumber II, Correctional Facility | Departmental Open | Education and Experience | Continuous | 24 |
| Program Administrator, Correctional School (Supervisory) | Departmental Promotional | QAP | 2/28/20 | 32 |
| School Psychologist | Departmental Open | Education and Experience | Continuous | 2 |
| Senior Librarian, Correctional Facility | Departmental Open | Education and Experience | Continuous | 8 |
| Sergeant, Youth Authority | Departmental Promotional | QAP | 3/6/20 | 29 |
| Supervisor of Building Trades, Correctional Facility | Departmental Open | QAP | 11/15/19 | 178 |
| Supervisor of Vocational Instruction | Departmental Open | Education and Experience | Continuous | 17 |
| Teacher, High School - Arts & Crafts, Correctional Facility | Departmental Open | Education and Experience | Continuous | 4 |
| Vocational Instructor - Building Maintenance, Correctional Facility | Departmental Open | Education and Experience | Continuous | 9 |
| Vocational Instructor - Computer and Related Technology, Correctional Facility | Departmental Open | Education and Experience | Continuous | 22 |
| Vocational Instructor - Electrical Work, Correctional Facility | Departmental Open | Education and Experience | Continuous | 10 |
| Vocational Instructor - Refrigeration & Air Conditioning Repair, Correctional Facility | Departmental Open | Education and Experience | Continuous | 3 |
| Water & Sewage Plant Supervisor, Correctional Facility | Departmental Open | Education and Experience | Continuous | 13 |

| | | |
|-----------------------------------|----------------------|---|
| SEVERITY: VERY SERIOUS | FINDING NO. 1 | EQUAL EMPLOYMENT OPPORTUNITY QUESTIONNAIRES WERE NOT SEPARATED FROM APPLICATIONS |
|-----------------------------------|----------------------|---|

Summary: Out of 30 examinations reviewed, 4 examinations included applications where EEO questionnaires were not separated from

the STD. 678 employment application. Specifically, 40 of the 1,087 applications reviewed included EEO questionnaires that were not separated from the STD. 678 employment application. This is the second consecutive time this has been a finding for the CDCR.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a): for example, a person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Applicants for employment in state civil service are asked to voluntarily provide ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD. 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The CDCR states that multiple oversights by analysts when processing EEO questionnaires led to the non-compliance in this area.

Corrective Action: As this is the second consecutive time this has been a finding for CDCR, it is the expectation that CDCR develops a meaningful and measurable plan to achieve compliance in this area. Within 90 days of the date of this report, the CDCR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that future EEO questionnaires are separated from all applications. Copies of relevant documentation demonstrating that the corrective action

has been implemented must be included with the corrective action response.

Permanent Withhold Actions

Departments are granted statutory authority to permit withhold of eligibles from lists based on specified criteria. (Gov. Code, § 18935.) Permanent appointments and promotions within the state civil service system shall be merit-based, ascertained by a competitive examination process. (Cal. Const., art. VII, § 1, subd. (b).) If a candidate for appointment is found not to satisfy the minimum qualifications, the appointing power shall provide written notice to the candidate, specifying which qualification(s) are not satisfied and the reason(s) why. The candidate shall have an opportunity to establish that s/he meets the qualifications. (Cal. Code Regs., tit. 2, § 249.4, subd. (b).) If the candidate fails to respond, or fails to establish that s/he meets the minimum qualification(s), the candidate's name shall be removed from the eligibility list. (Cal. Code Regs., tit. 2, § 249.4, subd. (b)), (HR Manual, section 1105.) The appointing authority shall promptly notify the candidate in writing, and shall notify the candidate of his or her appeal rights. (*Ibid.*) A permanent withhold does not necessarily permanently restrict a candidate from retaking the examination for the same classification in the future; however, the appointing authority may place a withhold on the candidate's subsequent eligibility record if the candidate still does not meet the minimum qualifications or continues to be unsuitable. (HR Manual, Section 1105). State agency human resources offices are required to maintain specific withhold documentation for a period of five years. (*Ibid.*)

During the period under review, October 1, 2019, through March 31, 2020, the CDCR conducted 352 permanent withhold actions. The CRU reviewed 35 of these permanent withhold actions, which are listed below:

| Exam Title | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold |
|--|---------|-----------------------------|-----------------------------|---|
| Accountant I (Specialist) | 0PB31 | 9/14/2018 | 9/14/2019 | Failed to Meet Minimum Qualifications (MQs) |
| Accountant Trainee | 9PB31 | 12/5/2019 | 12/5/2020 | Failed to Meet MQs |
| Associate Budget Analyst | 5PB04 | 4/26/2019 | 4/26/2020 | Failed to Meet MQs |
| Associate Governmental Program Analyst | 9PB04 | 6/19/2019 | 6/19/2020 | Failed to Meet MQs |

| Exam Title | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold |
|---|----------|-----------------------------|-----------------------------|-------------------------------------|
| Business Service Officer I (Supervisor) | 3PB17-02 | 1/26/2020 | 1/26/2020 | Failed to Meet MQs |
| Case Records Technician | 8CE7P | 11/14/2019 | 11/14/2020 | Failed to Meet MQs |
| Construction Supervisor II (Correctional Facility) | 9PB07 | 8/26/2019 | 8/26/2020 | Failed to Meet MQs |
| Correctional Counselor I | 7CED9 | 9/30/2019 | 9/30/2020 | Failed to Meet MQs |
| Correctional Counselor I | 7CED9 | 9/30/2019 | 9/30/2020 | Failed to Meet MQs |
| Correctional Supervising Cook (Correctional Facility) | 6CEAU | 7/8/2019 | 7/8/2020 | Failed to Meet MQs |
| Information Technology Associate | 7PB33 | 5/19/2019 | 5/19/2020 | Failed to Meet MQs |
| Information Technology Specialist I | 7PB35 | 11/30/2019 | 11/30/2020 | Failed to Meet MQs |
| Information Technology Supervisor II | 7PB39 | 9/22/2019 | 9/22/2020 | Failed to Meet MQs |
| Information Technology Technician | 7PB32 | 8/28/2019 | 8/28/2020 | Failed to Meet MQs |
| Labor Relations Analyst | 9PB26 | 1/30/2019 | 1/30/2020 | Failed to Meet MQs |
| Legal Secretary | 5PB25 | 1/27/2020 | 1/27/2021 | Failed to Meet MQs |
| Materials And Stores Supervisor I (Correctional Facility) | 8RC03 | 4/17/2019 | 4/17/2020 | Failed to Meet MQs |
| Materials And Stores Supervisor I (Correctional Facility) | 8RC03 | 1/10/2020 | 1/10/2021 | Failed to Meet MQs |
| Office Technician (Typing) | 4PB24-02 | 6/6/2019 | 6/6/2021 | Failed to Meet MQs |
| Office Technician (Typing) | 4PB24-02 | 11/13/2019 | 11/13/2020 | Failed to Meet MQs |
| Office Technician (Typing) | 4PB24-02 | 10/16/2019 | 10/16/2020 | Failed to Meet MQs |
| Painter II (Correctional Facility) | 6CEAT | 8/15/2019 | 8/15/2020 | Failed to Meet MQs |
| Personnel Specialist | 1PB12 | 9/3/2019 | 9/3/2020 | Failed to Meet MQs |
| Plumber II (Correctional Facility) | 6CEAL | 7/20/2019 | 7/20/2020 | Failed to Meet MQs |
| Property Controller II (Correctional Facility) | 7RC17 | 11/22/2019 | 11/22/2020 | Failed to Meet MQs |

| Exam Title | Exam ID | Date List Eligibility Began | Date List Eligibility Ended | Reason Candidate Placed on Withhold |
|---|----------|-----------------------------|-----------------------------|-------------------------------------|
| Research Data Analyst II | 8PB38 | 7/30/2019 | 7/30/2020 | Failed to Meet MQs |
| Research Data Supervisor I | 8PB42 | 6/18/2019 | 6/18/2020 | Failed to Meet MQs |
| Senior Accounting Officer (Specialist) | 4PB39-01 | 6/4/2019 | 6/4/2020 | Failed to Meet MQs |
| Senior Personnel Specialist | 5PB10 | 7/1/2019 | 7/1/2020 | Failed to Meet MQs |
| Staff Services Analyst (General) | 7PB34 | 5/17/2019 | 5/7/2020 | Failed to Meet MQs |
| Staff Services Analyst (General) | 7PB34 | 5/7/2019 | 5/7/2020 | Failed to Meet MQs |
| Staff Services Manager I | 9PB19 | 11/21/2018 | 11/21/2019 | Failed to Meet MQs |
| Staff Services Manager I | 9PB19 | 11/14/2019 | 11/14/2020 | Failed to Meet MQs |
| Stationary Engineer (Correctional Facility) | 4PB16 | 12/7/2019 | 12/7/2021 | Failed to Meet MQs |
| Supervisor Of Correctional Education Programs | 6CEAF | 7/2/2019 | 7/2/2020 | Failed to Meet MQs |

| | |
|----------------------|--|
| IN COMPLIANCE | FINDING NO. 2 PERMANENT WITHHOLD ACTIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES |
|----------------------|--|

The CRU found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications,

they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

For the purposes of temporary appointments, an employment list is considered not to exist where there is an open eligible list that has three or fewer names of persons willing to accept appointment and no other employment list for the classification is available. (Cal. Code Regs., tit. 2, § 265.) In such a situation, an appointing power may make a temporary appointment in accordance with section 265.1 (*Ibid.*) A Temporary Authorization Utilization (TAU) appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII.) In addition, when a temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.)

During the period under review, December 1, 2019, through May 31, 2020, the CRU selected 108 CDCR appointments, which are listed below:

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|---|--------------------|--------------|-----------|---------------|
| Accountant I (Specialist) | Certification List | Permanent | Full Time | 1 |
| Accountant Trainee | Certification List | Permanent | Full Time | 1 |
| Accounting Officer (Specialist) | Certification List | Permanent | Full Time | 4 |
| Administrative Law Judge I, Board of Parole Hearings | Certification List | Permanent | Full Time | 1 |
| Assistant Correctional Food Manager (Department of Corrections) | Certification List | Limited Term | Full Time | 1 |
| Associate Governmental Program Analyst | Certification List | Limited Term | Full Time | 1 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | 1 |
| Carpenter II -Correctional Facility | Certification List | Permanent | Full Time | 1 |
| Correctional Counselor I | Certification List | Limited Term | Full Time | 1 |
| Correctional Counselor II (Supervisor) | Certification List | Permanent | Full Time | 1 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|--|--------------------|--------------|-----------|---------------|
| Correctional Counselor III | Certification List | Permanent | Full Time | 1 |
| Correctional Lieutenant | Certification List | Permanent | Full Time | 4 |
| Correctional Plant Manager I, Department of Corrections | Certification List | Permanent | Full Time | 1 |
| Correctional Supervising Cook (Correctional Facility) | Certification List | Permanent | Full Time | 1 |
| Electrician III (Correctional Facility) | Certification List | Permanent | Full Time | 1 |
| Electronics Technician - Correctional Facility | Certification List | Permanent | Full Time | 1 |
| Heavy Truck Driver - Correctional Facility | Certification List | Permanent | Full Time | 1 |
| Information Technology Associate | Certification List | Permanent | Full Time | 3 |
| Information Technology Specialist I | Certification List | Permanent | Full Time | 2 |
| Information Technology Specialist III | Certification List | Permanent | Full Time | 1 |
| Information Technology Supervisor II | Certification List | Permanent | Full Time | 1 |
| Labor Relations Specialist | Certification List | Permanent | Full Time | 1 |
| Materials and Stores Supervisor I - Correctional Facility | Certification List | Permanent | Full Time | 2 |
| Materials and Stores Supervisor II - Correctional Facility | Certification List | Permanent | Full Time | 1 |
| Office Services Supervisor I (Typing) | Certification List | Limited Term | Full Time | 1 |
| Office Technician (Typing) | Certification List | Limited Term | Full Time | 2 |
| Office Technician (Typing) | Certification List | Permanent | Full Time | 1 |
| Personnel Specialist | Certification List | Permanent | Full Time | 2 |
| Personnel Supervisor I | Certification List | Permanent | Full Time | 1 |
| Pest Control Technician (Correctional Facility) | Certification List | Permanent | Full Time | 1 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|--|--------------------|--------------|-----------|---------------|
| Plumber II (Correctional Facility) | Certification List | Permanent | Full Time | 1 |
| Senior Accounting Officer (Specialist) | Certification List | Permanent | Full Time | 1 |
| Staff Services Analyst (General) | Certification List | Limited Term | Full Time | 1 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | 5 |
| Staff Services Manager I | Certification List | Limited Term | Full Time | 1 |
| Staff Services Manager I | Certification List | Permanent | Full Time | 3 |
| Staff Services Manager II (Supervisory) | Certification List | Limited Term | Full Time | 1 |
| Staff Services Manager II (Supervisory) | Certification List | Permanent | Full Time | 1 |
| Teacher (High School-Physical Education) (Correctional Facility) | Certification List | Permanent | Full Time | 1 |
| Teaching Assistant (Correctional Facility) | Certification List | Permanent | Full Time | 1 |
| Vocational Instructor -Masonry-Correctional Facility | Certification List | Permanent | Full Time | 1 |
| Warehouse Manager II - Correctional Facility | Certification List | Permanent | Full Time | 1 |
| Office Technician (Typing) | LEAP | Temporary | Full Time | 1 |
| Staff Services Analyst (General) | LEAP | Temporary | Full Time | 2 |
| Associate Budget Analyst | Transfer | Permanent | Full Time | 2 |
| Associate Governmental Program Analyst | Transfer | Permanent | Full Time | 2 |
| Captain (Adult Institution) | Transfer | Permanent | Full Time | 2 |
| Case Records Technician | Transfer | Permanent | Full Time | 1 |
| Case Records Technician | Transfer | Limited Term | Full Time | 2 |
| Correctional Counselor I | Transfer | Limited Term | Full Time | 1 |
| Correctional Counselor III | Transfer | Permanent | Full Time | 1 |
| Correctional Lieutenant | Transfer | Permanent | Full Time | 5 |
| Correctional Officer | Transfer | Permanent | Full Time | 8 |

| Classification | Appointment Type | Tenure | Time Base | No. of Appts. |
|--|--------------------------|--------------|--------------|---------------|
| Information Technology Specialist II | Transfer | Permanent | Full Time | 1 |
| Maintenance Mechanic - Correctional Facility | Transfer | Permanent | Full Time | 1 |
| Materials and Stores Supervisor I -Correctional Facility | Transfer | Permanent | Full Time | 2 |
| Office Technician (Typing) | Transfer | Limited Term | Full Time | 1 |
| Office Technician (Typing) | Transfer | Permanent | Full Time | 1 |
| Painter II - Correctional Facility | Transfer | Permanent | Full Time | 1 |
| Parole Agent II, Adult Parole (Specialist) | Transfer | Permanent | Full Time | 1 |
| Personnel Specialist | Transfer | Permanent | Full Time | 1 |
| Prison Canteen Manager I | Transfer | Permanent | Full Time | 1 |
| Senior Personnel Specialist | Transfer | Permanent | Full Time | 1 |
| Senior Special Agent | Transfer | Permanent | Full Time | 1 |
| Special Agent | Transfer | Permanent | Full Time | 2 |
| Staff Services Manager I | Transfer | Permanent | Full Time | 2 |
| Staff Services Manager II | Transfer | Limited Term | Full Time | 1 |
| Supervising Case Records Technician | Transfer | Permanent | Full Time | 1 |
| Mechanical and Technical Occupational Trainee | Temporary | Temporary | Full Time | 1 |
| Skilled Trades Journeyperson (Casual Employment) | Temporary | Temporary | Intermittent | 1 |
| Construction Supervisor II, Correctional Facility | Training and Development | Permanent | Full Time | 1 |

| | |
|-----------------------------------|---|
| SEVERITY: VERY SERIOUS | FINDING NO. 3 UNLAWFUL APPOINTMENT |
|-----------------------------------|---|

Summary: The CDCR made one appointment utilizing the certification list for the Information Technology Associate. The hired candidate did not meet minimum qualifications for the classification.

Criteria: Pursuant to Government Code section 18931, subdivision (a), the Board shall establish minimum qualifications for determining the

fitness and qualifications of employees for each class of position. In accordance with California Code of Regulations, title 2, section 249.4, appointing powers shall verify that the candidate satisfies the minimum qualifications of the classification before the candidate is appointed.

Severity:

Very Serious. An unlawful appointment provides the employee with an unfair and unearned appointment advantage over other employees whose appointments have been processed in compliance with the requirements of civil service law. Unlawful appointments which are not corrected also create appointment inconsistencies that jeopardize the equitable administration of the civil service merit system.

When an unlawful appointment is voided, the employee loses any tenure in the position, as well as seniority credits, eligibility to take promotional examinations, and compensation at the voided appointment level. If “bad faith” is determined on the part of the appointing power, civil or criminal action may be initiated. Disciplinary action may also be pursued against any officer or employee in a position of authority who directs any officer or employee to take action in violation of the appointment laws. If bad faith is determined on the part of the employee, the employee may be required to reimburse all compensation resulting from the unlawful appointment and may also be subject to disciplinary action.

Cause:

The CDCR states an error in understanding the minimum qualifications of the classification is the cause of this finding.

Corrective Action: Within 90 days of the date of this report, the CDCR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate that the department will improve its hiring practices. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

| | |
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| SEVERITY: SERIOUS | FINDING NO. 4 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND THOSE THAT WERE PROVIDED WERE UNTIMELY |
|------------------------------|--|

Summary: The CDCR did not provide 26 probationary reports of performance for 19 of the 108 appointments reviewed by the CRU. In addition, the CDCR did not provide 16 probationary reports of performance in a timely manner, as reflected in the table below. This is the second consecutive time this has been a finding for the CDCR.

| Classification | Appointment Type | Number of Appointments | Total Number of Missing Probation Reports |
|--|--------------------|------------------------|---|
| Accounting Officer (Specialist) | Certification List | 1 | 1 |
| Associate Governmental Program Analyst | Certification List | 1 | 2 |
| Carpenter II -Correctional Facility | Certification List | 1 | 1 |
| Correctional Counselor III | Certification List | 1 | 1 |
| Correctional Supervising Cook (Correctional Facility) | Certification List | 1 | 1 |
| Electrician III (Correctional Facility) | Certification List | 1 | 3 |
| Electronics Technician -Correctional Facility | Certification List | 1 | 1 |
| Materials and Stores Supervisor II - Correctional Facility | Certification List | 1 | 3 |
| Senior Accounting Officer (Specialist) | Certification List | 1 | 1 |
| Staff Services Analyst (General) | Certification List | 1 | 1 |
| Staff Services Manager I | Certification List | 1 | 1 |
| Teacher (High School-Physical Education) (Correctional Facility) | Certification List | 1 | 1 |
| Teaching Assistant (Correctional Facility) | Certification List | 1 | 2 |
| Warehouse Manager II -Correctional Facility | Certification List | 1 | 1 |
| Associate Budget Analyst | Transfer | 1 | 1 |
| Associate Governmental Program Analyst | Transfer | 1 | 2 |
| Captain (Adult Institution) | Transfer | 1 | 1 |

| Classification | Appointment Type | Number of Appointments | Total Number of Missing Probation Reports |
|--------------------------|------------------|------------------------|---|
| Case Records Technician | Transer | 1 | 1 |
| Prison Canteen Manager I | Transfer | 1 | 1 |

| Classification | Appointment Type | Number of Appointments | Total Number of Late Probation Reports |
|---|--------------------|------------------------|--|
| Accountant I (Specialist) | Certification List | 1 | 1 |
| Accounting Officer (Specialist) | Certification List | 2 | 2 |
| Correctional Plant Manager I, Department of Corrections | Certification List | 1 | 1 |
| Electronics Technician -Correctional Facility | Certification List | 1 | 1 |
| Pest Control Technician (Correctional Facility) | Certification List | 1 | 1 |
| Staff Services Manager I | Certification List | 2 | 2 |
| Staff Services Manager II (Supervisory) | Certification List | 1 | 1 |
| Associate Budget Analyst | Transfer | 1 | 1 |
| Office Technician (Typing) | Transfer | 1 | 1 |
| Parole Agent II, Adult Parole (Specialist) | Transfer | 1 | 1 |
| Special Agent Department of Corrections | Transfer | 2 | 2 |
| Staff Services Manager I | Transfer | 1 | 1 |
| Supervising Case Records Technician | Transfer | 1 | 1 |

Criteria:

The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not

specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*Ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

Severity: Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

Cause: The CDCR states that supervisors and managers are notified via Basic Supervision Training of the requirements to complete timely probationary reports. However, some supervisors and managers failed to provide timely probationary reports.

Corrective Action: As this is the second consecutive time this has been a finding for CDCR, it is the expectation that it develops a meaningful and measurable plan to achieve compliance in this area. Within 90 days of the date of this report, the CDCR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

| | |
|--------------------------------|--|
| SEVERITY: TECHNICAL | FINDING NO. 5 APPOINTMENT DOCUMENTATION WAS NOT KEPT FOR THE APPROPRIATE AMOUNT OF TIME |
|--------------------------------|--|

Summary: The CDCR failed to retain personnel records such as NOPA's and duty statements. Of the 108 appointments reviewed, the CDCR did not retain 19 NOPAs and 2 duty statements.

Criteria: As specified in section 26 of the Board's Regulations, appointing powers are required to retain records related to affirmative action, equal employment opportunity, examinations, merit, selection, and appointments for a minimum period of 5 years from the date the record is created. These records are required to be readily accessible and retained in an orderly and systematic manner. (Cal. Code Regs., tit. 2, § 26.)

Severity: Technical. Without documentation, the CRU could not verify if the appointments were properly conducted.

Cause: The CDCR provides that human error was the cause of this finding.

Corrective Action: Within 90 days of the date of this report, the CDCR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with the record retention requirements of California Code of Regulations, title 2, section 26. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the

department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

| | | |
|-----------------------------------|----------------------|--|
| SEVERITY: VERY SERIOUS | FINDING NO. 6 | COMPLAINANTS WERE NOT NOTIFIED OF THE REASONS FOR DELAYS IN DECISIONS WITHIN THE PRESCRIBED TIME PERIOD |
|-----------------------------------|----------------------|--|

Summary: The CDCR provided evidence that 33 discrimination complaints related to a disability, medical condition, or denial of reasonable accommodation were filed during the compliance review period of June 1, 2019, through May 31, 2020. 10 of the 33 complaint investigations exceeded 90 days and the CDCR failed to provide written communication to the complainant regarding the status of the complaint.

Criteria: The appointing power must issue a written decision to the complainant within 90 days of the complaint being filed. (Cal. Code Regs., tit. 2, § 64.4, subd. (a).) If the appointing power is unable to issue its decision within the prescribed time period, the appointing power must inform the complainant in writing of the reasons for the delay. (*Ibid.*)

Severity: Very Serious. Employees were not informed of the reasons for delays in decisions for discrimination complaints. Employees may feel their concerns are not being taken seriously, which can leave the agency open to liability and low employee morale.

Cause: The CDCR states that the process for handling complaints in the EEO office did not address contacting employees if a delay occurred.

Corrective Action: The CDCR states that it is updating its process to include sending written notices to complainants if there is a delay. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which addresses the corrections the department has implemented to ensure conformity with the requirements of California Code of Regulations, title 2, section 64.4, subdivision (a).

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, October 1, 2019, through March 31, 2020, the CDCR had 44 PSC's that were in effect. The CRU reviewed 21 of those, which are listed below:

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|------------------------------|----------------|-----------------|-----------------|---------------------------|---------------------|
| Andrada & Associates | Legal Services | 7/31/19-6/30/23 | \$109,325.00 | Yes | Yes |
| Andrada & Associates | Legal Services | 8/23/19-6/30/22 | \$114,375.00 | Yes | Yes |
| Angelo Kilday & Kilduff, LLP | Legal Services | 7/1/19-6/30/22 | \$62,175.00 | Yes | Yes |

| Vendor | Services | Contract Dates | Contract Amount | Justification Identified? | Union Notification? |
|------------------------------|----------------------|------------------|-----------------|---------------------------|---------------------|
| Angelo Kilday & Kilduff, LLP | Legal Services | 5/17/19-6/30/22 | \$116,550.00 | Yes | Yes |
| Beeson Terhorst, LLP | Legal Services | 12/31/19-6/30/23 | \$83,300.00 | Yes | Yes |
| Burke Williams And Sorensen | Legal Services | 10/28/16-6/30/20 | \$65,150.00 | Yes | Yes |
| Cregger Law, LLP | Legal Services | 7/1/19-6/30/21 | \$35,050.00 | Yes | Yes |
| Davins Interpreting Service | Interpreter Services | 6/19/17-6/30/20 | \$4,168,243.50 | Yes | No |
| Fill Good, LLC | Maintenance Services | 11/14/19-6/30/22 | \$208,973.30 | Yes | Yes |
| Kronick Moskovitz Tiedemann | Legal Services | 7/1/19-6/30/22 | \$20,600.00 | Yes | Yes |
| Lebeau Thelen, LLP | Legal Services | 9/20/19-6/30/22 | \$98,625.00 | Yes | Yes |
| Lifesigns Now | Interpreter Services | 7/5/17-6/30/20 | \$4,238,872.50 | Yes | No |
| Longyear & Lavra LLP | Legal Services | 10/18/19-6/30/22 | \$137,615.00 | Yes | Yes |
| Longyear & Lavra, LLP | Legal Services | 2/27/19-12/31/19 | \$8,960.00 | Yes | Yes |
| Mcnamara Ney Beatty Slattery | Legal Services | 11/7/19-6/30/22 | \$36,375.00 | Yes | Yes |
| Nield Law Group, APC | Legal Services | 11/21/19-6/30/22 | \$120,430.00 | Yes | Yes |
| Nield Law Group, APC | Legal Services | 10/9/19-6/30/22 | \$122,320.00 | Yes | Yes |
| Oviedo Law Group, Inc | Legal Services | 7/1/19-6/30/22 | \$155,325.00 | Yes | Yes |
| Rivera Hewitt Paul, LLP | Legal Services | 11/12/19-6/30/22 | \$126,295.00 | Yes | Yes |
| Rivera Hewitt Paul, LLP | Legal Services | 7/30/19-6/30/22 | \$173,760.00 | Yes | Yes |
| Shaw Law Group, PC | Legal Services | 8/21/18-6/30/21 | \$17,400.00 | Yes | Yes |

| | |
|------------------------------|---|
| SEVERITY: SERIOUS | FINDING NO. 7 UNIONS WERE NOT NOTIFIED OF PERSONAL SERVICES CONTRACTS |
|------------------------------|---|

Summary: The CDCR did not notify unions prior to entering into 2 of the 21 PSC's reviewed.

Criteria: The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Gov. Code, § 19132, subd. (b)(1).)

Severity: Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for the type of work that their members could perform.

Cause: The CDCR states an oversight by an analyst was the cause for this finding.

Corrective Action: It is the contracting department's responsibility to identify and notify any unions whose members could potentially perform the type of work to be contracted prior to executing the PSC. The PSC's reviewed during this compliance review involved legal and maintenance services, functions which various rank-and-file civil service classifications perform. The CDCR provides that training has been provided to analysts and managers to ensure policies and procedures relative to contracting are followed. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which addresses the correction the department has implemented to ensure conformity with the requirements of Government Code section 19132.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained

within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Additionally, new supervisors must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CDCR's mandated training program that was in effect during the compliance review period, April 1, 2018, through March 31, 2020. The CDCR's ethics training and sexual harassment prevention training were found to be out of compliance.

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| SEVERITY: VERY SERIOUS | FINDING NO. 8 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS |
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Summary: The CRU reviewed the records of 2,430 new and existing filers. CDCR did not provide ethics training to 343 of 2,282 existing filers. In addition, the CDCR did not provide ethics training to 129 of 148 new filers within 6 months of their appointment. This is the second consecutive time this has been a finding for the CDCR.

Criteria: New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

Severity: Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

Cause: The CDCR states that new filers were not being notified to complete ethics training timely.

Corrective Action: As this is the second consecutive time this has been a finding for CDCR, it is the expectation that it develops a meaningful and measurable plan to achieve compliance in this area. The CDCR provides it has implemented electronic Ethics training and will run quarterly reports to ensure compliance in this area. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which demonstrates the corrections the department has implemented to demonstrate conformity with Government Code section 11146.3.

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| SEVERITY: VERY SERIOUS | FINDING NO. 9 SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS |
|-----------------------------------|--|

Summary: The CRU reviewed the training records of 2,855 new and existing supervisors. The CDCR did not provide sexual harassment prevention training to 131 of 1,741 new supervisors within 6 months of their appointment. In addition, the CDCR did not provide sexual harassment prevention training to 249 of 1,114 existing supervisors every 2 years. This is the second consecutive time this has been a finding for the CDCR.

Criteria: Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

Severity: Very Serious. The department does not ensure that all new and existing supervisors are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

Cause: The CDCR states an information technology error resulted in inaccurate reporting on the compliance for sexual harassment prevention training.

Corrective Action: As this is the second consecutive time this has been a finding for CDCR, it is the expectation that it develops a meaningful and measurable plan to achieve compliance in this area. Within 90 days of the date of this report, the CDCR must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that supervisors are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Compensation and Pay

Salary Determination

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate¹¹ upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, December 1, 2019, through May 31, 2020, the CRU selected 76 appointments to determine if the CDCR applied salary regulations accurately, and correctly processed employees' compensation, which are listed below:

¹¹ "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|--------------------|--------------|-----------|-----------------------|
| Accountant I (Specialist) | Certification List | Permanent | Full Time | \$3,359.00 |
| Accountant Trainee | Certification List | Permanent | Full Time | \$3,793.00 |
| Accounting Officer (Specialist) | Certification List | Permanent | Full Time | \$4,749.00 |
| Accounting Trainee | Certification List | Permanent | Full Time | \$4,749.00 |
| Accounting Trainee | Certification List | Permanent | Full Time | \$4,496.00 |
| Accounting Trainee | Certification List | Permanent | Full Time | \$4,496.00 |
| Administrative Law Judge I, Board of Parole Hearings | Certification List | Permanent | Full Time | \$9,463.00 |
| Assistant Correctional Food Manager (Department of Corrections) | Certification List | Limited Term | Full Time | \$5,191.00 |
| Associate Governmental Program Analyst | Certification List | Permanent | Full Time | \$5,149.00 |
| Carpenter II - Correctional Facility | Certification List | Permanent | Full Time | \$4,965.00 |
| Correctional Counselor II (Supervisor) | Certification List | Permanent | Full Time | \$10,599.00 |
| Correctional Lieutenant | Certification List | Permanent | Full Time | \$9,265.00 |
| Correctional Lieutenant | Certification List | Permanent | Full Time | \$9,265.00 |
| Correctional Plant Manager I, Department of Corrections | Certification List | Permanent | Full Time | \$8,136.00 |
| Correctional Supervising Cook (Correctional Facility) | Certification List | Permanent | Full Time | \$3,729.00 |
| Electrician III (Correctional Facility) | Certification List | Permanent | Full Time | \$5,725.00 |
| Electronics Technician - Correctional Facility | Certification List | Permanent | Full Time | \$4,442.00 |
| Heavy Truck Driver - Correctional Facility | Certification List | Permanent | Full Time | \$4,133.00 |
| Information Technology Specialist I | Certification List | Permanent | Full Time | \$5,064.00 |
| Materials and Stores Supervisor I - Correctional Facility | Certification List | Permanent | Full Time | \$3,698.00 |

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|--|--------------------|--------------|-----------|-----------------------|
| Materials and Stores Supervisor II - Correctional Facility | Certification List | Permanent | Full Time | \$4,888.00 |
| Office Services Supervisor I (Typing) | Certification List | Limited Term | Full Time | \$3,260.09 |
| Office Technician (Typing) | Certification List | Limited Term | Full Time | \$3,363.00 |
| Personnel Specialist | Certification List | Permanent | Full Time | \$3,466.00 |
| Personnel Specialist | Certification List | Permanent | Full Time | \$3,301.00 |
| Personnel Supervisor I | Certification List | Permanent | Full Time | \$5,277.00 |
| Pest Control Technician (Correctional Facility) | Certification List | Permanent | Full Time | \$3,945.00 |
| Plumber II (Correctional Facility) | Certification List | Permanent | Full Time | \$5,467.00 |
| Senior Accounting Officer (Specialist) | Certification List | Permanent | Full Time | \$4,957.76 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,281.00 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,281.00 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,281.00 |
| Staff Services Analyst (General) | Certification List | Limited Term | Full Time | \$4,320.00 |
| Staff Services Analyst (General) | Certification List | Permanent | Full Time | \$4,281.00 |
| Staff Services Manager I | Certification List | Permanent | Full Time | \$7,434.00 |
| Staff Services Manager I | Certification List | Permanent | Full Time | \$6,768.00 |
| Staff Services Manager I | Certification List | Permanent | Full Time | \$6,124.00 |
| Staff Services Manager I | Certification List | Limited Term | Full Time | \$6,124.00 |
| Staff Services Manager II (Supervisory) | Certification List | Limited Term | Full Time | \$7,988.00 |
| Teacher (High School-Physical Education) (Correctional Facility) | Certification List | Permanent | Full Time | \$8,089.40 |
| Teaching Assistant (Correctional Facility) | Certification List | Permanent | Full Time | \$2,707.00 |
| Vocational Instructor - Masonry- -Correctional Facility | Certification List | Permanent | Full Time | \$5,454.53 |

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|--------------------|--------------|-----------|-----------------------|
| Warehouse Manager II - Correctional Facility | Certification List | Permanent | Full Time | \$5,207.00 |
| Office Technician (Typing) | LEAP | Temporary | Full Time | \$3,935.00 |
| Staff Services Analyst (General) | LEAP | Temporary | Full Time | \$3,992.00 |
| Staff Services Analyst (General) | LEAP | Temporary | Full Time | \$4,495.00 |
| Associate Budget Analyst | Transfer | Permanent | Full Time | \$6,446.00 |
| Associate Governmental Program Analyst | Transfer | Permanent | Full Time | \$5,406.00 |
| Associate Governmental Program Analyst | Transfer | Permanent | Full Time | \$5,677.85 |
| Captain (Adult Institution) | Transfer | Permanent | Full Time | \$12,206.26 |
| Captain (Adult Institution) | Transfer | Permanent | Full Time | \$12,106.26 |
| Case Records Technician | Transfer | Limited Term | Full Time | \$4,060.00 |
| Correctional Counselor I | Transfer | Limited Term | Full Time | \$9,487.00 |
| Correctional Lieutenant | Transfer | Permanent | Full Time | \$9,909.00 |
| Correctional Lieutenant | Transfer | Permanent | Full Time | \$9,781.00 |
| Correctional Lieutenant | Transfer | Permanent | Full Time | \$9,976.62 |
| Correctional Lieutenant | Transfer | Permanent | Full Time | \$10,367.86 |
| Correctional Officer | Transfer | Permanent | Full Time | \$7,335.00 |
| Correctional Officer | Transfer | Permanent | Full Time | \$7,782.00 |
| Correctional Officer | Transfer | Permanent | Full Time | \$4,860.00 |
| Correctional Officer | Transfer | Permanent | Full Time | \$4,660.00 |
| Correctional Officer | Transfer | Permanent | Full Time | \$4,660.00 |
| Correctional Officer | Transfer | Permanent | Full Time | \$8,093.28 |
| Maintenance Mechanic - Correctional Facility | Transfer | Permanent | Full Time | \$5,221.00 |
| Materials and Stores Supervisor I - Correctional Facility | Transfer | Permanent | Full Time | \$4,076.00 |

| Classification | Appointment Type | Tenure | Time Base | Salary (Monthly Rate) |
|---|------------------|--------------|-----------|-----------------------|
| Materials and Stores Supervisor I - Correctional Facility | Transfer | Permanent | Full Time | \$3,698.00 |
| Office Technician (Typing) | Transfer | Limited Term | Full Time | \$3,301.00 |
| Office Technician (Typing) | Transfer | Permanent | Full Time | \$3,661.00 |
| Painter II - Correctional Facility | Transfer | Permanent | Full Time | \$4,965.00 |
| Prison Canteen Manager I | Transfer | Permanent | Full Time | \$4,557.00 |
| Senior Special Agent Department of Corrections | Transfer | Permanent | Full Time | \$12,060.36 |
| Special Agent Department of Corrections | Transfer | Permanent | Full Time | \$9,703.00 |
| Special Agent Department of Corrections | Transfer | Permanent | Full Time | \$9,703.00 |
| Staff Services Manager I | Transfer | Permanent | Full Time | \$6,768.00 |
| Staff Services Manager I | Transfer | Permanent | Full Time | \$6,124.00 |
| Supervising Case Records Technician | Transfer | Permanent | Full Time | \$3,738.00 |

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| IN COMPLIANCE | FINDING NO. 10 | SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found no deficiencies in the salary determinations that were reviewed. The CDCR appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a

decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, December 1, 2019, through May 31, 2020, the CRU selected 36 alternate range movements to determine if the CDCR applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

| Classification | Prior Range | Current Range | Time Base | Salary (Monthly Rate) |
|--|-------------|---------------|-----------|-----------------------|
| Administrative Assistant I | A | L | Full Time | \$4,590.00 |
| Associate Governmental Program Analyst | A | L | Full Time | \$5,304.00 |
| Attorney | C | D | Full Time | \$7,818.00 |
| Correctional Case Records Analyst | B | C | Full Time | \$4,790.00 |
| Correctional Case Records Analyst | B | C | Full Time | \$4,810.00 |
| Correctional Case Records Analyst | B | C | Full Time | \$4,810.00 |
| Correctional Counselor I | J | K | Full Time | \$7,898.00 |
| Correctional Counselor I | J | K | Full Time | \$7,820.00 |
| Correctional Counselor I | J | K | Full Time | \$7,820.00 |
| Correctional Counselor I | J | K | Full Time | \$7,820.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Correctional Officer | J | K | Full Time | \$6,190.00 |
| Information Technology Specialist I | A | B | Full Time | \$7,205.00 |
| Information Technology Specialist I | A | B | Full Time | \$6,571.00 |
| Information Technology Technician | B | C | Full Time | \$4,012.00 |
| Management Services Technician | A | B | Full Time | \$3,298.00 |
| Materials And Stores Supervisor II - Correctional Facility | A | S | Full Time | \$4,475.00 |
| Materials And Stores Supervisor II - Correctional Facility | A | S | Full Time | \$4,867.00 |
| Office Assistant (General) | A | B | Full Time | \$2,675.00 |
| Office Assistant (Typing) | A | B | Full Time | \$2,766.00 |

| Classification | Prior Range | Current Range | Time Base | Salary (Monthly Rate) |
|--|-------------|---------------|-----------|-----------------------|
| Parole Service Associate | A | B | Full Time | \$4,708.00 |
| Personnel Specialist | A | B | Full Time | \$3,822.00 |
| Personnel Specialist | C | D | Full Time | \$4,694.00 |
| Personnel Specialist | C | D | Full Time | \$4,886.00 |
| Personnel Specialist | B | C | Full Time | \$3,900.00 |
| Personnel Specialist | B | C | Full Time | \$4,196.00 |
| Personnel Specialist | C | D | Full Time | \$4,470.00 |
| Special Agent, Department of Corrections | A | B | Full Time | \$10,188.00 |
| Staff Services Analyst (General) | B | C | Full Time | \$4,505.00 |
| Staff Services Analyst (General) | A | B | Full Time | \$4,155.00 |
| Staff Services Analyst (General) | B | C | Full Time | \$4,281.00 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 11 ALTERNATE RANGE MOVEMENTS DID NOT COMPLY WITH CIVIL SERVICE LAWS, RULES, AND CALHR POLICIES AND GUIDELINES |
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Summary: The CRU found the following errors in the CDCR's determination of employee compensation:

| Classification | Description of Findings | Criteria |
|----------------------------------|--|------------------------------------|
| Office Assistant (General) | Employee was not paid at the minimum step of the salary range and received a special in-grade salary adjustment resulting in the employee being overcompensated. | Cal. Code Regs., tit. 2, § 599.685 |
| Staff Services Analyst (General) | Incorrect salary determination, resulting in the employee being undercompensated. | Cal. Code Regs., tit. 2, § 599.676 |
| Correctional Officer | Incorrect anniversary date, which resulted in the employee being overcompensated. | Cal. Code Regs., tit. 2, § 599.676 |
| Personnel Specialist | Incorrect anniversary date, which resulted in the employee being overcompensated. | Cal. Code Regs., tit. 2, § 599.674 |

Criteria: If the appointing authority certifies in the manner prescribed by the Department that the employee has met the standards of efficiency required for the position, the employee who is paid at the minimum step of the salary range in a class designated by the Department

may receive a special in-grade salary adjustment to the second step of the salary range effective on the first of the monthly pay period next following completion of:

- (a) six months of qualifying service after the appointment; or
- (b) as otherwise may be provided by the Department. When movement between classes to the minimum step results in a salary increase of less than one step, the Department shall provide that the months of qualifying service be proportionately reduced from six to the number of months of qualifying service that will permit the employee to receive approximately the same annual salary the employee would have received upon appointment to the minimum step with a one-step increase. (Cal. Code Regs., tit. 2, § 599.685.)

Alternate ranges are designed to recognize increased competence in the performance of class duties based upon experience obtained while in the class. The employee gains status in the alternate range as though each range were a separate classification. (Classification and Pay Guide Section 220.)

Departments are required to calculate and apply salary rules for each appointed employee accurately based on the pay plan for the state civil service. All civil service classes have salary ranges with minimum and maximum rates. (Cal. Code Regs., tit. 2, § 599.666.)

Severity: Very Serious. In four circumstances, the CDCR failed to comply with the requirements outlined in the state civil service pay plan. Incorrectly applying compensation laws and rules not in accordance with CalHR's policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay amounts.

Cause: The CDCR states the cause of this finding to be the result of human error.

Corrective Action: The CDCR provides that it will provide additional training to staff and supervisors/managers on salary rules; and, supervisors will be required to routinely review transactions to catch potential errors. Within 90 days of the date of this report, the CDCR must submit to

the SPB a written documentation which demonstrates the corrections the department has implemented to ensure that employees meet alternate range criteria prior to approving and keying range changes.

Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum of understanding shall be controlling without further legislative action.¹² (Gov. Code, § 19836 subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary

¹² Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee's salary in the exempt appointment. (*Ibid.*) For example, An employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, December 1, 2019, through May 31, 2020, the CRU reviewed four authorized HAM requests to determine if the CDCR correctly applied Government Code section 19836, and appropriately verified, approved and documented candidates' extraordinary qualifications, which are listed below:

| Classification | Appointment Type | Status | Salary Range | Salary (Monthly Rate) |
|---|--------------------|-----------|---------------------------|-----------------------|
| Staff Psychiatrist, Correctional and Rehabilitative Services (Safety) | Certification List | Permanent | \$11,968.00 - \$26,720.00 | \$26,720.00 |
| Staff Psychiatrist, Correctional and Rehabilitative Services (Safety) | Certification List | Permanent | \$22,237.00 - \$26,720.00 | \$26,720.00 |
| Support Services Assistant (Interpreter) | Certification List | Permanent | \$3,469.00 - \$4,958.00 | \$4,958.00 |
| Vocational Instructor - Painting- -Correctional Facility | Certification List | Permanent | \$5,454.53 - \$10,971.58 | \$5,734.85 |

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| IN COMPLIANCE | FINDING NO. 12 | HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES |
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The CRU found that the HAM requests the CDCR made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, December 1, 2019, through May 31, 2020, the CRU reviewed 25 bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Bargaining Unit | Time Base | No. of Appts. |
|---|-----------------|-----------|---------------|
| Accounting Administrator I (Specialist) | R01 | Full Time | 1 |
| Associate Governmental Program Analyst | R01 | Full Time | 2 |
| Captain (Adult Institution) | M06 | Full Time | 1 |
| Correctional Counselor I | R06 | Full Time | 3 |
| Correctional Counselor II (Specialist) | R06 | Full Time | 3 |
| Correctional Counselor II (Supervisor) | S06 | Full Time | 1 |
| Correctional Counselor III | S06 | Full Time | 3 |
| Correctional Lieutenant | S06 | Full Time | 1 |
| Correctional Officer | R06 | Full Time | 5 |
| Correctional Sergeant | S06 | Full Time | 2 |
| Library Technical Assistant (Safety) | R04 | Full Time | 1 |
| Special Agent Department of Corrections | E97 | Full Time | 2 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 13 INCORRECT AUTHORIZATION OF BILINGUAL PAY |
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Summary: The CRU found 15 errors in the CDCR's authorization of bilingual pay:

| Classification | Description of Findings | Criteria |
|---|---|------------------------------|
| Accounting Administrator I (Specialist) | Department failed to supply supporting documentation demonstrating the need for bilingual services. | Pay Differential 14 |
| Library Technical Assistant (Safety) | | |
| Captain (Adult Institution) | The department failed to provide the employee's oral fluency exam results to certify that the employee is a qualified bilingual employee. | Government Code section 7296 |
| Correctional Counselor I (2 positions) | | |
| Correctional Counselor II (Specialist) (3 positions) | | |
| Correctional Counselor III (2 positions) | | |
| Correctional Lieutenant | | |
| Correctional Officer (2 positions) | | |
| Special Agent Department of Corrections (2 positions) | | |

Criteria: For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).) An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

Severity: Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

Cause: The CDCR states a lack of updated bilingual pay procedures caused this finding.

Corrective Action: The CDCR provides that it has updated its bilingual pay procedures; and, training on the new procedures will be provided to staff. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with Government Code section 7296 and Pay Differential 14.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or, recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, December 1, 2019, through May 31, 2020, the CRU reviewed 60 pay differentials¹³ to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

| Classification | Number of Positions | Pay Differential | Monthly Amount |
|--|---------------------|------------------|----------------|
| Administrative Law Judge I, Board Of Parole Hearings | 1 | 84 | \$534.30 |
| Attorney | 1 | 337 | \$900.00 |
| Attorney III | 7 | 337 | \$900.00 |
| Attorney IV | 2 | 337 | \$900.00 |

¹³ For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

| Classification | Number of Positions | Pay Differential | Monthly Amount |
|---|---------------------|------------------|----------------|
| Captain (Adult Institution) | 1 | 420 | \$685.26 |
| Chief Engineer I - Correctional Facility | 1 | 409 | \$365.25 |
| Construction Supervisor III, (Correctional Facility) | 1 | 433 | \$293.13 |
| Correctional Administrator, Department Of Corrections | 1 | 420 | \$735.36 |
| Correctional Counselor I | 1 | 164 | \$452.65 |
| Correctional Counselor II (Specialist) | 2 | 44 | \$171.00 |
| Correctional Counselor III | 1 | 165 | \$223.36 |
| Correctional Lieutenant | 8 | 44 | \$128.00 |
| Correctional Lieutenant | 1 | 165 | \$586.86 |
| Correctional Lieutenant | 1 | 165 | \$391.24 |
| Correctional Officer | 4 | 44 | \$171.00 |
| Correctional Officer | 2 | 156 | \$200.00 |
| Correctional Officer | 1 | 164 | \$155.64 |
| Correctional Officer | 1 | 164 | \$389.10 |
| Correctional Officer | 2 | 164 | \$544.74 |
| Correctional Sergeant | 1 | 44 | \$128.00 |
| Correctional Sergeant | 1 | 165 | \$174.04 |
| Correctional Sergeant | 2 | 165 | \$522.12 |
| Custodian | 2 | 67 | \$190.00 |
| Custodian (Correctional Facility) | 1 | 67 | \$190.00 |
| Custodian Supervisor II | 1 | 67 | \$210.00 |
| Executive Assistant | 1 | 52 | \$356.77 |
| Office Technician (Typing) | 1 | 67 | \$190.00 |
| Parole Agent I Adult Parole | 1 | 164 | \$469.35 |
| Parole Agent II, Adult Parole (Specialist) | 1 | 164 | \$492.80 |
| Senior Special Agent Department of Corrections | 1 | 165 | \$911.92 |
| Senior Special Agent Department of Corrections | 2 | 165 | \$893.36 |
| Special Agent Department of Corrections | 3 | 165 | \$212.70 |
| Stationary Engineer (Correctional Facility) | 1 | 435 | \$100.00 |
| Support Services Assistant (Interpreter) | 1 | 348 | \$2,500.00 |
| Water And Sewage Plant Supervisor - Correctional Facility | 1 | 234 | \$420.84 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 14 INCORRECT AUTHORIZATION OF PAY DIFFERENTIALS |
|-------------------------------|--|

Summary: The CRU found 13 errors in the 60 pay differentials reviewed:

| Classification | Area | Description of Findings | Criteria |
|---|--|---|----------|
| Administrative Law Judge I, Board of Parole Hearings | National Judicial College (NJC) Differential | Missing documentation showing evidence the employee possesses a certificate from the NJC for completion of a minimum of two and one-half days of administrative law adjudication designated training courses. | 84 |
| Correctional Counselor II (Specialist) (2 positions) | Educational Incentive Pay | Missing documentation to substantiate the educational differential. | 44 |
| Correctional Lieutenant (4 positions) | | | |
| Correctional Officer | | | |
| Correctional Sergeant | | | |
| Correctional Lieutenant | Senior Peace Officer Longevity Pay | The employee did not receive the pay differential on the date they were eligible, resulting in an overpayment. | 165 |
| Correctional Sergeant | | | |
| Office Technician (Typing) | Institutional Worker Supervision Pay | Missing documentation showing evidence that the employee had regular, direct responsibility for work supervision, on-the-job training, and work performance evaluation of at least two inmates, wards, or resident workers who substantially replace civil service employee for a total of at least 120 hours per pay period. | 67 |
| Water And Sewage Plant Supervisor - Correctional Facility | Chief Plan Operator Differential | Missing documentation showing evidence that the employee possesses a Water and/or Wastewater Treatment Plant Operator certification. | 234 |

Criteria:

A pay differential may be appropriate when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-

based pay; incentive-based pay; or recruitment and retention. (CalHR Classification and Pay Manual Section 230.)

Severity: Very Serious. The CDCR failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CDCR states a lack of process to ensure supervisors review pay differential transactions caused this finding.

Corrective Action: The CDCR provides that it will be providing additional training to staff and managers who key in the pay differentials. Additionally, it will implement peer review and conduct audits prior to keying in pay differentials. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with Pay Differentials 44, 67, 84, 165, and 234, and ensure that employees are compensated correctly and that transactions are keyed accurately.

Out-of-Class Assignments and Pay

For excluded¹⁴ and most rank and file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for

¹⁴ "Excluded employee" means an employee as defined in section 3527, subd. (b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, December 1, 2019, through May 31, 2020, the CRU reviewed nine OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

| Classification | Bargaining Unit | Out-of-Class Classification | Time Frame |
|---|-----------------|--|------------------|
| Associate Governmental Program Analyst | R01 | Staff Services Manager I | 12/2/19-2/28/20 |
| Correctional Case Records Analyst | R01 | Correctional Case Records Supervisor | 12/23/19-2/20/20 |
| Correctional Lieutenant | S06 | Captain Adult Institution | 1/21/20-3/20/20 |
| Information Technology Specialist I | R01 | Information Technology Supervisor II | 12/31/19-2/28/20 |
| Personnel Supervisor II | S01 | Staff Services Manager I | 12/23/19-3/20/20 |
| Plumber II (Correctional Facility) | R12 | Plumber III (Correctional Facility) | 4/10/20-5/29/20 |
| Staff Services Manager I | S01 | Staff Services Manager II | 12/2/19-3/30/20 |
| Staff Services Manager I | S01 | Staff Services Manager II | 12/10/19-2/7/220 |
| Supervisor of Building Trades Correctional Facility | S12 | Correctional Plant Supervisor, Department of Corrections | 1/21/20-3/20/220 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 15 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY |
|-----------------------------------|---|

Summary: The CRU found two errors in the CDCR's authorization of OOC pay:

| Classification | Out-of-Class Classification | Description of Findings | Criteria |
|--|---|---|----------------------|
| Plumber II (Correctional Facility) | Plumber III (Correctional Facility) | OOB was not properly calculated for May 2020, resulting in the employee being undercompensated. | Pay Differential 236 |
| Supervisor of Building Trades Correctional Facility | Correctional Plant Supervisor, Department of Corrections | OOB was not properly calculated for January 2020, resulting in the employee being undercompensated. | Pay Differential 236 |

Criteria: Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

Severity: Very Serious. The CDCR failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

Cause: The CDCR states that these findings were the result of human error.

Corrective Action: The CDCR provides that it will be providing additional training to staff and managers who calculate and key OOB pay. Additionally, it will implement peer review and conduct audits prior to keying in OOB pay. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with Gov. Code, § 599.810 and Pay Differential 236.

Leave

Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all of the working days of a month. When counting 189 days, every day worked, including partial days¹⁵ worked and paid absences¹⁶, is counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees¹⁷ may work up to 2,000 hours in any calendar year.

¹⁵ For example, two hours or ten hours counts as one day.

¹⁶ For example, vacation, sick leave, compensating time off, etc.

¹⁷ Bargaining Unit 6 covers CDCR employees providing custody, supervision, and treatment of wards and inmates remanded to state custody.

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss or interruption of benefits.

At the time of the review, the CDCR had 1,334 positive paid employees whose hours were tracked. The CRU reviewed 50 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies and guidelines, which are listed below:

| Classification | Tenure | Time Frame | Time Worked |
|---|-------------------|-----------------|----------------|
| Captain (Adult Institution) | Retired Annuitant | 7/1/18-6/30/19 | 960 Hours |
| Correctional Administrator, Department of Corrections | Retired Annuitant | 7/1/18-6/30/19 | 960 Hours |
| Correctional Lieutenant | Retired Annuitant | 7/1/18-6/30/19 | 960 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,922.01 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,899.67 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,855.5 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,966.33 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,180.84 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,209.07 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,988.58 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,199.25 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,011.5 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,559.25 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,974.25 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,041.75 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,026.84 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,973 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,184.78 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,995.5 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,137.25 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,997.79 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 1,970.5 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,078.5 Hours |
| Correctional Plant Supervisor | Retired Annuitant | 7/1/18-6/30/19 | 960 Hours |
| Correctional Sergeant | Retired Annuitant | 7/1/18-6/30/19 | 963.5 Hours |

| Classification | Tenure | Time Frame | Time Worked |
|---|-------------------|----------------|----------------|
| Mechanical and Technical Occupational Trainee | Temporary | 4/1/19-3/31/20 | 1,523.5 Hours |
| Mechanical and Technical Occupational Trainee | Temporary | 4/1/19-3/31/20 | 1,451.25 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 303.75 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 35.75 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 253.5 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 293 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 1,076 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 417.25 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 551.5 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 139 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 269.75 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 322.95 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 620.75 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 585.75 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 265.5 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 266.75 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 468.5 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 214.45 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 284.09 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 326.5 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 200.25 Hours |
| Self-Help Sponsor (Part Time) | Temporary | 4/1/19-3/31/20 | 241.75 Hours |
| Special Agent | Retired Annuitant | 7/1/18-6/30/19 | 964 Hours |
| Stationary Engineer (Correctional Facility) | Retired Annuitant | 7/1/18-6/30/19 | 529.5 Hours |
| Student Assistant | Temporary | 4/1/19-3/31/20 | 1,546.75 Hours |

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| SEVERITY: SERIOUS | FINDING NO. 16 POSITIVE PAID EMPLOYEES EXCEEDED THE NINE MONTH LIMITATION IN ANY TWELVE CONSECUTIVE MONTH PERIOD |
|------------------------------|---|

Summary: The CDCR did not consistently monitor the actual number of days and/or hours worked in order to ensure that TAU positive paid employees did not exceed the 189-day or 1,500-hour limitation in any 12-consecutive month period. Specifically, the following two employees exceeded the 1,500-hour, or 189-day, limitation:

| Classification | Tenure | Time Frame | Time Worked | Time Worked Over Limit |
|---|-----------|------------------|----------------|------------------------|
| Mechanical and Technical Occupational Trainee | Temporary | 4/1/19 - 3/31/20 | 1,523.5 Hours | 23.5 Hours |
| Student Assistant | Temporary | 4/1/19 - 3/31/20 | 1,546.75 Hours | 46.75 Hours |

Criteria: If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of nine months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal Const., art. VII, § 5.) Time worked shall be counted on a daily basis with every 21 days worked counting as one month or 189 days equaling nine months. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Severity: Serious. The number of days or hours an individual may work in a temporary appointment is limited in the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list.

Cause: The CDCR states staff tracked calendar months rather than consecutive months, resulting in two staff exceeding time limitations.

Corrective Action: The CDCR provides that it will update procedures and provide training to staff relative to tracking positive paid employees. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with California Code of Regulations, title 2, section 265.1.

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| SEVERITY: SERIOUS | FINDING NO. 17 DEPARTMENT DID NOT PROPERLY MONITOR TIME WORKED FOR ALL POSITIVE PAID EMPLOYEES |
|------------------------------|---|

Summary: The CDCR did not consistently monitor the actual number of hours worked in order to ensure that nine positive paid employees did not exceed the 2,000-hour limitation in any calendar year.

Additionally, the CDCR did not consistently track and monitor two retired annuitant total hours worked, allowing employees to work over the 960-hour limitation in any fiscal year.

Specifically, the following employees exceeded the established limitations:

| Classification | Tenure | Time Frame | Time Worked | Time Worked Over Limit |
|-----------------------|-------------------|-----------------|----------------|------------------------|
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,180.84 Hours | 180.84 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,209.07 Hours | 209.07 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,199.25 Hours | 199.25 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,011.5 Hours | 11.5 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,041.75 Hours | 41.75 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,026.84 Hours | 26.84 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,184.78 Hours | 184.78 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,137.25 Hours | 137.25 Hours |
| Correctional Officer | Permanent | 1/1/19-12/31/19 | 2,078.5 Hours | 78.5 Hours |
| Correctional Sergeant | Retired Annuitant | 7/1/18-6/30/19 | 963.5 Hours | 3.5 Hours |
| Special Agent | Retired Annuitant | 7/1/18-6/30/19 | 964 Hours | 4 Hours |

Criteria: A permanent intermittent employee may work up to 1,500 hours in any calendar year. The number of hours and schedule of work shall

be determined based upon the operational needs of each department. (Applicable Bargaining Unit Agreements.)

A permanent intermittent appointment is an appointment in which the employee is to work periodically or for a fluctuating portion of the full-time work schedule. A permanent intermittent employee may work up to 2,000 hours in any calendar year. (Bargaining Unit 6).

According to Government Code Section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June) for all state employers without reinstatement or loss or interruption of benefits.

Severity:

Serious. The number of days or hours an individual may work in a permanent intermittent appointment is limited in the state civil service. To ensure permanent intermittent appointments are not made on a full-time basis, a maximum of 1,500 hours has been placed on the number of hours which a permanent intermittent employee may work any calendar year.

Existing law allows a person retired from state service to be rehired by the State as a retired annuitant. However, retired annuitants shall not work more than 960 hours each fiscal year without reinstatement, loss or interruption of benefits for all state employers.

Cause:

The CDCR states that these findings were the result of human error.

Corrective Action: The CDCR provides that it will update procedures and provide training to staff relative to tracking positive paid employees. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with with Government Code section 21224, California Code of Regulations, title 2, section 599.665, and applicable Bargaining Unit agreements.

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| SEVERITY: SERIOUS | FINDING NO. 18 POSITIVE PAID EMPLOYEES' TIME AND ATTENDANCE RECORDS WERE NOT PROPERLY RETAINED AND/OR DOCUMENTED |
|------------------------------|---|

Summary: The CDCR failed to retain 34 timesheets, as listed below:

| Classification | Number of Employees | Number of Missing Timesheets |
|---|---------------------|------------------------------|
| Correctional Lieutenant | 1 | 2 |
| Correctional Officer | 1 | 7 |
| Mechanical and Technical Occupational Trainee | 1 | 10 |
| Self-Help Sponsor (Part Time) | 3 | 12 |
| Student Assistant | 1 | 3 |

Additionally, the CRU found 130 payroll and/or timekeeping errors when reviewing positive paid employees:

| Classification | Number of Employees | Number of Timesheet Errors |
|-------------------------------|---------------------|----------------------------|
| Correctional Officer | 12 | 43 |
| Self-Help Sponsor (Part Time) | 14 | 87 |

Criteria: Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.) Such records shall be kept in the form and manner prescribed by the Department of Finance in connection with its powers to devise, install and supervise a modern and complete accounting system for state agencies. (*Ibid.*)

Severity: Serious. Failure to properly retain time and attendance records and to monitor employees' time worked results in civil service employees receiving incorrect and/or inappropriate compensation and/or benefits.

Cause: The CDCR states that these findings were the result of human error and a lack of a process to ensure supervisor evaluation of all timesheets processed.

Corrective Action: Within 90 days of the date of this report, the CDCR must submit to the SPB a written corrective action response which addresses

the corrections the department will implement to ensure all timesheets are accounted for and processed in conformity with California Code of Regulations, title 2, section 599.665, and Human Resources Manual Section 2101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation; extreme weather preventing safe travel to work; states of emergency; voting; and when employees need time off to attend special events. (*Ibid.*)

During the period under review, January 1, 2019, through December 31, 2019, the CRU reviewed 50 ATO appointments to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

| Classification | Time Frame | Amount of Time on ATO |
|----------------------|----------------|-----------------------|
| Captain | May 2019 | 168 Hours |
| Captain | July 2019 | 168 Hours |
| Captain | August 2019 | 176 Hours |
| Correctional Officer | July 2019 | 176 Hours |
| Correctional Officer | August 2019 | 168 Hours |
| Correctional Officer | August 2019 | 168 Hours |
| Correctional Officer | June 2019 | 176 Hours |
| Correctional Officer | September 2019 | 168 Hours |
| Correctional Officer | October 2019 | 176 Hours |
| Correctional Officer | November 2019 | 176 Hours |
| Correctional Officer | December 2019 | 176 Hours |
| Correctional Officer | May 2019 | 168 Hours |
| Correctional Officer | July 2019 | 176 Hours |
| Correctional Officer | October 2019 | 176 Hours |
| Correctional Officer | June 2019 | 168 Hours |
| Correctional Officer | May 2019 | 168 Hours |
| Correctional Officer | July 2019 | 168 Hours |

| Classification | Time Frame | Amount of Time on ATO |
|---|---------------------------|-----------------------|
| Correctional Officer | June 2019 | 168 Hours |
| Correctional Officer | July 2019 | 168 Hours |
| Correctional Officer | June 2019 | 168 Hours |
| Correctional Officer | August 2019 | 168 Hours |
| Correctional Officer | November 2019 | 176 Hours |
| Correctional Officer | July 2019 | 176 Hours |
| Correctional Officer | June 2019 | 168 Hours |
| Correctional Officer | July 2019 | 168 Hours |
| Correctional Officer | September 2019 | 176 Hours |
| Correctional Officer | October 2019 | 168 Hours |
| Correctional Officer | June 2019 | 168 Hours |
| Correctional Officer | July 2019 | 176 Hours |
| Correctional Supervising Cook (Correctional Facility) | June 2019 | 168 Hours |
| Correctional Supervising Cook (Correctional Facility) | July 2019 | 176 Hours |
| Electrician II, Correctional Facility | September - December 2019 | 648 Hours |
| Groundskeeper Correctional Facility | June 2019 | 168 Hours |
| Materials and Stores Supervisor I (Correctional Facility) | May 2019 | 168 Hours |
| Materials and Stores Supervisor I (Correctional Facility) | July 2019 | 176 Hours |
| Materials and Stores Supervisor I (Correctional Facility) | May 2019 | 168 Hours |
| Materials and Stores Supervisor I (Correctional Facility) | July 2019 | 176 Hours |
| Materials and Stores Supervisor I (Correctional Facility) | August 2019 | 176 Hours |
| Office Assistant (Typing) | July 2019 | 176 Hours |
| Office Assistant (Typing) | August 2019 | 176 Hours |
| Office Technician (Typing) | September 2019 | 176 Hours |
| Office Technician (Typing) | October 2019 | 176 Hours |
| Personnel Specialist | July 24, 2019 | 8 Hours |
| Stationary Engineer (Correctional Facility) | October 2019 | 176 Hours |
| Stationary Engineer (Correctional Facility) | November 2019 | 176 Hours |
| Supervisor Of Correctional Education Programs | June 2019 | 168 Hours |
| Supervisor Of Correctional Education Programs | July 2019 | 168 Hours |
| Treatment Team Supervisor | June 2019 | 168 Hours |
| Treatment Team Supervisor | July 2019 | 168 Hours |
| Treatment Team Supervisor | August 2019 | 176 Hours |

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|------------------------------|---|
| SEVERITY: SERIOUS | FINDING NO. 19 ADMINISTRATIVE TIME OFF WAS NOT PROPERLY DOCUMENTED |
|------------------------------|---|

Summary: The CDCR did not grant ATO in conformity with the established policies and procedures. Specifically, the CDCR did not obtain approval from CalHR prior to authorizing ATO in excess of 30 days for 16 employees, and did not key 9 employees' ATO hours correctly into the Leave Accounting System.

Additionally, the CDCR did not provide any documentation for one employee granted ATO. As such, the CRU could not verify if ATO was granted in conformity with established policies and procedures.

Criteria: Appointing authorities are authorized to approve ATO for up to five (5) working days. (Gov. Code, § 19991.10.) Furthermore, they "have delegated authority to approve up to 30 calendar days." (Human Resources Manual Section 2121.) Any ATO in excess of 30 calendar days must be approved in advance by the CalHR. (*Ibid.*) In most cases, if approved, the extension will be for an additional 30 calendar days. (*Ibid.*) The appointing authority is responsible for submitting ATO extension requests to CalHR at least 5 working days prior to the expiration date of the approved leave. (*Ibid.*)

When requesting an ATO extension, the appointing authority must provide a justification establishing good cause for maintaining the employee on ATO for the additional period of time. (*Ibid.*) ATO may not be used and will not be granted for an indefinite period. (*Ibid.*) If CalHR denies a request to extend ATO, or the appointing authority fails to request approval from CalHR to extend the ATO, the employee must be returned to work in some capacity. (*Ibid.*)

Regardless of the length of ATO, appointing authorities must maintain thorough documentation demonstrating the justification for the ATO, the length of the ATO, and the approval of the ATO. (*Ibid.*)

Severity: Serious. Because an employee on ATO is being paid while not working, a failure to closely monitor ATO usage could result in

costly abuse. The use of ATO is subject to audit and review by CalHR and other control agencies to ensure policy compliance. Findings of non-compliance may result in the revocation of delegated privileges.

Cause: The CDCR states a lack of a sound ATO process caused this finding.

Corrective Action: The CDCR provides that it will implement procedures and provide training to personnel employees and supervisors/managers. Additionally, the CDCR is working to assign a coordinator to track and initiate timely requests for extensions of ATO. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with Government Code section 19991.10 and Human Resources Manual Section 2121. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee's attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, October 1, 2019, through December 31, 2019, the CDCR reported 1,380 units comprised of 21,893 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

| Timesheet Leave Period | Unit Reviewed | Number of Employees | Number of Timesheets Reviewed | Number of Missing Timesheets |
|------------------------|---------------|---------------------|-------------------------------|------------------------------|
| December 2019 | 065-158 | 113 | 113 | 0 |
| December 2019 | 095-205 | 143 | 143 | 0 |

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| SEVERITY: TECHNICAL | FINDING NO. 20 LEAVE ACTIVITY AND CORRECTION CERTIFICATION FORMS WERE NOT COMPLETED FOR ALL LEAVE RECORDS REVIEWED |
|--------------------------------|---|

Summary: The CDCR failed to provide completed Leave Activity and Correction Certification forms for both units reviewed during the December 2019 pay period.

Criteria: Departments are responsible for maintaining accurate and timely leave accounting records for their employees. (Cal. Code Regs., tit. 2, § 599.665.) Departments shall identify and record all errors found using a Leave Activity and Correction form. (Human Resources Manual Section 2101.) Furthermore, departments shall certify that all leave records for the unit/pay period identified on the certification form have been reviewed and all leave errors identified have been corrected. (*Ibid.*)

Severity: Technical. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. For post-audit purposes, the completion of Leave Activity and Correction Certification forms demonstrates compliance with CalHR policies and guidelines.

Cause: The CDCR did not have revised procedures in place documenting the appropriate audit process until April 2020.

Corrective Action: The CDCR provides that it has updated procedures and has provided training to ensure compliance in this area. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department

has implemented to ensure conformity that their monthly internal audit process is documented and that all leave input is keyed accurately and timely. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

State Service

The state recognizes two different types of absences while an employee is on pay status; paid or unpaid. The unpaid absences can affect whether a pay period is considered to be a qualifying or non-qualifying pay period for state service and leave accruals.

Generally, an employee who has 11 or more working days of service in a monthly pay period shall be considered to have a complete month, a month of service, or continuous service.¹⁸ (Cal. Code Regs., tit. 2, § 599.608.) Full time and fractional employees who work less than 11 working days in a pay period will have a non-qualifying month and will not receive state service or leave accruals for that month.

Hourly or daily rate employees working at a department in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit. 2, § 599.609.)

For each qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay period. (Cal. Code Regs. tit. 2, § 599.608.) When computing months of total state service to determine a change in the monthly credit for vacation with pay, only qualifying monthly pay periods of service before and after breaks in service shall be counted. (Cal. Code Regs. tit. 2, § 599.739.) Portions of non-qualifying monthly pay periods of service shall not be counted nor accumulated. (*Ibid.*) On the first day following a qualifying monthly pay period, excluded

¹⁸ Government Code sections 19143, 19849.9, 19856.1, 19858.1, 19859, 19861, 19863.1, and 19997.4 and California Code of Regulations, title 2, sections 599.609, 599.682, 599.683, 599.685, 599.687, 599.737, 599.738, 599.739, 599.740, 599.746, 599.747, 599.776.1, 599.787, 599.791, 599.840 and 599.843 provide further clarification for calculating state time.

employees¹⁹ shall be allowed credit for annual leave with pay. (Cal. Code Regs., tit. 2, § 599.752.)

Permanent intermittent employees also earn leave credits on the pay period following the accumulated accrual of 160 hours worked. Hours worked in excess of 160 hours in a monthly pay period, are not counted or accumulated towards leave credits.

During the period under review, December 1, 2019, through May 31, 2019, the CDCR had 229 employees with non-qualifying pay period transactions. The CRU reviewed 50 transactions to ensure compliance with applicable laws, regulations and CalHR policy and guidelines, which are listed below:

| Type of Transaction | Time Base | Number Reviewed |
|---------------------------|-----------|-----------------|
| Non-Qualifying Pay Period | Full Time | 24 |
| Qualifying Pay Period | Full Time | 26 |

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| SEVERITY: VERY SERIOUS | FINDING NO. 21 INCORRECT APPLICATION OF STATE SERVICE AND LEAVE TRANSACTIONS |
|-----------------------------------|--|

Summary: The CRU found the following errors in the CDCR's state service transactions:

| Type of Transaction | Time base | State Service Incorrectly Posted | Leave Accruals Incorrectly Posted |
|---------------------------|-----------|-------------------------------------|--------------------------------------|
| Non-Qualifying Pay Period | Full Time | 2 | 2 |
| Qualifying Pay Period | Full Time | 3 | 3 |

Criteria: In the application of Government Code section 19837, an employee shall be considered to have a month of state service if the employee either: (1) has had 11 or more working days of service in a monthly pay period; or (2) would have had 11 or more working days of service in a monthly pay period but was laid off or on a leave of absence for the purpose of lessening the impact of an impending layoff. (Cal. Code Regs., tit.2, § 599.608.) Absences

¹⁹ As identified in Government Code sections 19858.3, subdivision (a), 19858.3, subdivision (b), or 19858.3, subdivision (c), or as it applies to employees excluded from the definition of state employee under Government Code section 3513, subdivision (c), or California Code of Regulations, title 2, section 599.752, subdivision (a), and appointees of the Governor as designated by the Department and not subject to section 599.752.1.

from state service resulting from permanent separation for more than 11 consecutive working days which fall into two consecutive pay periods shall disqualify one of the pay periods. (*Ibid.*)

Hourly or daily rate employees working in a state agency in which the full-time workweek is 40 hours who earn the equivalent of 160 hours of service in a monthly pay period or accumulated pay periods shall be considered to have a complete month, a month of service, or continuous service. (Cal. Code Regs., tit.2, § 599.609.) When an employee has a break in service or changes to full-time, any combination of time worked which does not equal one qualifying month of full-time service shall not be accumulated or counted. (*Ibid.*)

Severity: Very Serious. For audit purposes, accurate and timely attendance reporting is required of all departments. If the length of an informal leave results in a non-qualifying pay period, a state service transaction must be processed. Inappropriately authorizing state service credits and leave accruals to employees who did not earn them results in a monetary loss for the department.

Cause: The CDCR states that this finding was the result of human error and a lack of training.

Corrective Action: The CDCR provides that training and peer reviews will be implemented to prevent future errors. it has updated its bilingual pay procedures; and, training on the new procedures will be provided to staff. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure state service transactions are keyed accurately.

Policy and Processes

Nepotism

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (*Ibid.*)

Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include association by blood, adoption, marriage and/or cohabitation. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

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|----------------------|--|
| IN COMPLIANCE | FINDING NO. 22 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|--|

The CRU verified that the policy was disseminated to all staff and emphasized the CDCR's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CDCR's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of receiving notice or knowledge that the employee has suffered a work related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401 subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

| | |
|----------------------|---|
| IN COMPLIANCE | FINDING NO. 23 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES |
|----------------------|---|

The CRU verified that the CDCR provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the CDCR received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 160 permanent CDCR employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

| Classification | Date Performance Appraisals Due | Date Performance Appraisal Provided ²⁰ |
|--|---------------------------------|---|
| Accountant I (Specialist) | 4/1/19 | Not Provided |
| Accountant I (Specialist) | 2/4/19 | Not Provided |
| Accountant Trainee | 1/30/19 | Not Provided |
| Accountant Trainee | 7/20/19 | Not Provided |
| Accounting Officer (Specialist) | 1/22/19 | Not Provided |
| Accounting Officer (Specialist) | 1/1/19 | 10/2/2019 |
| Associate Governmental Program Analyst | 8/13/19 | Not Provided |
| Associate Governmental Program Analyst | 12/2/19 | Not Provided |
| Captain | 2/9/19 | Not Provided |
| Captain | 7/7/19 | Not Provided |
| Case Records Technician | 11/2/19 | Not Provided |

²⁰ For the purposes of the compliance review, the CRU allows a 30-day grace period past the due date.

| Classification | Date Performance Appraisals Due | Date Performance Appraisal Provided ²⁰ |
|---|---------------------------------|---|
| Chief Engineer I -Correctional Facility | 7/1/19 | Not Provided |
| Clinical Social Worker (Health/Correctional Facility) -Safety | 7/16/19 | Not Provided |
| Correctional Case Records Analyst | 9/22/19 | Not Provided |
| Correctional Case Records Analyst | 4/1/19 | Not Provided |
| Correctional Case Records Manager | 6/2/19 | 8/2/2019 |
| Correctional Counselor II (Specialist) | 6/22/19 | 11/20/2019 |
| Correctional Counselor II (Specialist) | 12/22/19 | Not Provided |
| Correctional Counselor II (Specialist) | 5/1/19 | Not Provided |
| Correctional Counselor II (Supervisor) | 1/26/19 | Not Provided |
| Correctional Counselor II (Supervisor) | 4/28/19 | 1/24/2019 |
| Correctional Counselor II (Supervisor) | 10/31/19 | Not Provided |
| Correctional Counselor II (Supervisor) | 3/9/19 | Not Provided |
| Correctional Counselor III | 9/11/19 | 5/29/2019 |
| Correctional Lieutenant | 11/30/19 | Not Provided |
| Correctional Lieutenant | 12/29/19 | 7/18/19 |
| Correctional Lieutenant | 12/15/19 | Not Provided |
| Correctional Lieutenant | 1/31/19 | Not Provided |
| Correctional Lieutenant | 10/12/19 | 7/1/2019 |
| Correctional Lieutenant | 3/31/19 | Not Provided |
| Correctional Lieutenant | 5/19/19 | Not Provided |
| Correctional Lieutenant | 12/8/19 | Not Provided |
| Correctional Officer | 2/9/19 | Not Provided |
| Correctional Officer | 7/27/19 | Not Provided |
| Correctional Officer | 7/14/19 | Not Provided |
| Correctional Officer | 3/9/19 | Not Provided |
| Correctional Officer | 9/14/19 | Not Provided |
| Correctional Officer | 9/8/19 | Not Provided |
| Correctional Officer | 6/1/19 | Not Provided |
| Correctional Officer | 12/14/19 | Not Provided |
| Correctional Officer | 10/5/19 | Not Provided |
| Correctional Officer | 4/21/19 | Not Provided |
| Correctional Officer | 5/4/19 | 11/14/2019 |
| Correctional Officer | 10/20/19 | Not Provided |

| Classification | Date Performance Appraisals Due | Date Performance Appraisal Provided ²⁰ |
|----------------------|---------------------------------|---|
| Correctional Officer | 6/29/19 | Not Provided |
| Correctional Officer | 11/16/19 | 9/1/2019 |
| Correctional Officer | 10/20/19 | Not Provided |
| Correctional Officer | 6/29/19 | Not Provided |
| Correctional Officer | 10/6/19 | Not Provided |
| Correctional Officer | 2/9/19 | 8/23/2019 |
| Correctional Officer | 5/17/19 | Not Provided |
| Correctional Officer | 12/14/19 | Not Provided |
| Correctional Officer | 9/8/19 | Not Provided |
| Correctional Officer | 12/15/19 | Not Provided |
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 6/16/19 | Not Provided |
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 1/12/19 | Not Provided |
| Correctional Officer | 8/24/19 | Not Provided |
| Correctional Officer | 6/16/19 | 9/18/2019 |
| Correctional Officer | 7/14/19 | 1/10/2019 |
| Correctional Officer | 6/1/19 | 5/27/19 |
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 5/17/19 | 5/31/2019 |
| Correctional Officer | 8/11/19 | 4/23/2019 |
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 6/1/19 | 6/13/2019 |
| Correctional Officer | 7/27/19 | Not Provided |
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 2/9/19 | Not Provided |
| Correctional Officer | 3/9/19 | Not Provided |
| Correctional Officer | 8/24/19 | Not Provided |
| Correctional Officer | 12/14/19 | Not Provided |
| Correctional Officer | 7/14/19 | Not Provided |
| Correctional Officer | 9/8/19 | Not Provided |
| Correctional Officer | 3/9/19 | 7/8/2019 |
| Correctional Officer | 5/17/19 | Not Provided |

| Classification | Date Performance Appraisals Due | Date Performance Appraisal Provided ²⁰ |
|----------------------|---------------------------------|---|
| Correctional Officer | 11/17/19 | Not Provided |
| Correctional Officer | 5/4/19 | Not Provided |
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 5/17/19 | Not Provided |
| Correctional Officer | 7/14/19 | Not Provided |
| Correctional Officer | 12/8/19 | Not Provided |
| Correctional Officer | 6/16/19 | Not Provided |
| Correctional Officer | 11/3/19 | Not Provided |
| Correctional Officer | 1/1/19 | Not Provided |
| Correctional Officer | 1/12/19 | Not Provided |
| Correctional Officer | 8/31/19 | 9/10/2019 |
| Correctional Officer | 7/27/19 | Not Provided |
| Correctional Officer | 8/24/19 | 3/4/2019 |
| Correctional Officer | 3/9/19 | Not Provided |
| Correctional Officer | 6/1/19 | Not Provided |
| Correctional Officer | 11/3/19 | Not Provided |
| Correctional Officer | 8/30/19 | 9/15/2019 |
| Correctional Officer | 10/5/19 | 11/26/2019 |
| Correctional Officer | 4/6/19 | Not Provided |
| Correctional Officer | 5/19/19 | 7/30/2019 |
| Correctional Officer | 5/4/19 | Not Provided |
| Correctional Officer | 7/14/19 | Not Provided |
| Correctional Officer | 10/19/19 | Not Provided |
| Correctional Officer | 10/19/19 | Not Provided |
| Correctional Officer | 12/8/19 | 8/5/2019 |
| Correctional Officer | 12/14/19 | Not Provided |
| Correctional Officer | 4/6/19 | Not Provided |
| Correctional Officer | 8/11/19 | Not Provided |
| Correctional Officer | 6/1/19 | Not Provided |
| Correctional Officer | 12/14/19 | Not Provided |
| Correctional Officer | 12/14/19 | Not Provided |
| Correctional Officer | 8/11/19 | Not Provided |
| Correctional Officer | 8/11/19 | Not Provided |

| Classification | Date Performance Appraisals Due | Date Performance Appraisal Provided ²⁰ |
|---|---------------------------------|---|
| Correctional Officer | 11/16/19 | Not Provided |
| Correctional Officer | 5/19/19 | Not Provided |
| Correctional Officer | 12/14/19 | 5/21/2019 |
| Correctional Officer | 1/12/19 | Not Provided |
| Correctional Officer | 8/11/19 | Not Provided |
| Correctional Officer | 10/6/19 | Not Provided |
| Correctional Sergeant | 8/25/19 | Not Provided |
| Correctional Sergeant | 10/1/19 | Not Provided |
| Correctional Sergeant | 12/22/19 | Not Provided |
| Correctional Sergeant | 6/29/19 | 7/7/2019 |
| Correctional Sergeant | 9/29/19 | Not Provided |
| Correctional Sergeant | 2/16/19 | Not Provided |
| Correctional Sergeant | 7/1/19 | Not Provided |
| Correctional Sergeant | 1/12/19 | 8/27/19 |
| Correctional Sergeant | 7/1/19 | Not Provided |
| Correctional Sergeant | 5/19/19 | Not Provided |
| Correctional Sergeant | 8/18/19 | Not Provided |
| Correctional Sergeant | 1/13/19 | Not Provided |
| Correctional Supervising Cook (Correctional Facility) | 4/22/19 | Not Provided |
| Correctional Supervising Cook (Correctional Facility) | 12/5/19 | 4/30/2019 |
| Correctional Supervising Cook (Correctional Facility) | 6/29/19 | 3/23/2019 |
| Custodian - Correctional Facility | 1/14/19 | Not Provided |
| Electrician II -Correctional Facility | 9/2/19 | Not Provided |
| Electronics Technician - Correctional Facility | 1/1/19 | 11/19/2019 |
| Heavy Equipment Mechanic (Correctional Facility) | 11/17/19 | Not Provided |
| Maintenance Mechanic - Correctional Facility | 10/2/19 | 11/4/2019 |
| Maintenance Mechanic - Correctional Facility | 7/5/19 | Not Provided |
| Maintenance Mechanic - Correctional Facility | 9/23/19 | Not Provided |

| Classification | Date Performance Appraisals Due | Date Performance Appraisal Provided ²⁰ |
|--|---------------------------------|---|
| Materials and Stores Supervisor I - Correctional Facility | 2/3/19 | Not Provided |
| Materials and Stores Supervisor II - Correctional Facility | 1/1/19 | Not Provided |
| Office Assistant (General) | 7/30/19 | Not Provided |
| Office Technician (Typing) | 4/1/19 | 6/7/2019 |
| Office Technician (Typing) | 6/2/19 | Not Provided |
| Painter II - Correctional Facility | 9/2/19 | Not Provided |
| Personnel Specialist | 11/3/19 | Not Provided |
| Senior Accounting Officer (Specialist) | 3/1/19 | Not Provided |
| Senior Librarian - Correctional Facility | 10/13/19 | Not Provided |
| Senior Special Agent | 9/1/19 | Not Provided |
| Special Agent | 9/1/19 | Not Provided |
| Special Agent | 10/1/19 | Not Provided |
| Staff Services Manager I | 5/15/19 | Not Provided |
| Supervising Correctional Cook (Department of Corrections) | 9/14/19 | Not Provided |
| Supervising Groundskeeper II - Correctional Facility | 11/2/19 | 2/14/2019 |
| Supervisor of Academic Instruction - Correctional Facility | 10/27/19 | Not Provided |
| Supervisor of Correctional Education Programs | 12/15/19 | Not Provided |
| Teacher (Elementary-Multiple Subjects) (Correctional Facility) | 8/17/19 | Not Provided |
| Teacher (High School-General Education) (Correctional Facility) | 1/20/19 | 10/11/2019 |
| Teacher (High School-General Education) (Correctional Facility) | 5/1/19 | Not Provided |
| Teacher (High School-Physical Education) (Correctional Facility) | 1/30/19 | Not Provided |
| Vocational Instructor (Building Maintenance) (Correctional Facility) | 3/2/19 | Not Provided |

| | |
|------------------------------|--|
| SEVERITY: SERIOUS | FINDING NO. 24 PERFORMANCE APPRAISALS WERE NOT PROVIDED TIMELY TO ALL EMPLOYEES |
|------------------------------|--|

Summary: The CDCR did not provide an annual performance appraisal to 128 employees, and did not provide performance appraisals in a timely manner to 13 of 160 employees reviewed after the completion of the employees' probationary periods.

Criteria: Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each twelve calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

Severity: Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

Cause: The CDCR states that supervisors and managers are notified via Basic and Advanced Supervision Training of the requirements to complete timely performance appraisals. However, some supervisors and managers failed to provide timely performance appraisals.

Corrective Action: The CDCR provides it will conduct bi-yearly audits and send reminders to supervisors and managers to complete annual performance appraisals. Within 90 days of the date of this report, the CDCR must submit to the SPB written documentation which documents the corrections the department has implemented to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798.

DEPARTMENTAL RESPONSE

The CDCR's response is attached as Attachment 1.

SPB REPLY

Based upon the CDCR written response, the CDCR will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified, must be submitted to the CRU.

OFFICE OF THE SECRETARY

PO Box 942883

Sacramento, CA 94283-0001



5/21/2021

Suzanne M. Ambrose, Executive Officer
State Personnel Board
801 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Executive Officer Ambrose:

The California Department of Corrections and Rehabilitation (CDCR) is submitting this letter to respond to the State Personnel Board's (SPB) compliance review for the CDCR personnel areas and time periods stated below.

The CDCR takes the findings of this audit very seriously. CDCR will focus on these findings to rectify these issues to prevent them from occurring in the future. In addition, we are committed to auditing areas in Human Resources to identify issues and address them expeditiously and to provide training as needed. CDCR appreciates SPB's review and the opportunity to respond to the findings.

| | |
|------------------------------------|-------------------------------------|
| Examinations | October 1, 2019 – March 31, 2020 |
| Appointments | December 1, 2019 – May 31, 2020 |
| Equal Employment Opportunity (EEO) | June 1, 2019 – May 31, 2020 |
| Personal Services Contracts (PSC) | October 1, 2019 – March 31, 2020 |
| Mandated Training | April 1, 2018 - March 31, 2020 |
| Compensation and Pay | December 1, 2019 – May 31, 2020 |
| Leave | January 1, 2019 – December 31, 2019 |
| Policy and Processes | Current as of December 2020 |

Finding 1: Equal Employment Opportunity Questionnaires Were Not Separated from Applications

CDCR recognizes the importance of protecting and ensuring confidentiality of Equal Employment Opportunity (EEO) information during the hiring process. During the 2018 SPB Compliance Review, CDCR learned it was in violation for not separating the EEO questionnaires from the applications. CDCR has been working to rectify this issue. However, during the recent audit it was learned that 40 of 1,087 applications continued to have this error. CDCR recognizes the seriousness of protected statuses on applications and will immediately work to eliminate this

Suzanne M. Ambrose, Executive Officer

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error by updated training as well as self-auditing to prevent this error from occurring with future job recruitments.

Finding 2: Permanent Withhold Actions Complied With Civil Service Laws and Board Rules

The Compliance Review Unit (CRU) found no deficiencies in the permanent withhold actions undertaken by the department during the compliance review period.

Finding 3: Unlawful Appointment

It was discovered during the SPB audit that an unlawful hire was made by CDCR. Specifically, in April 2020, an analyst reviewed minimum qualifications of an applicant and determined they met the qualifications. However, the applicant did not meet the requirements and the employee was hired, which resulted in an unlawful appointment. Training was provided to the employee and the supervisor/manager that oversees this respective area.

Finding 4: Probationary Evaluations Were Not Provided for all Appointments Reviewed

CDCR managers and supervisors are responsible for providing probationary evaluations for all employees who complete a probationary period. This requirement is outlined as part of the basic supervision for all new managers and supervisor. In addition to the probationary evaluation requirement, this training component is addressed to include the length of time for probationary periods for state employees and the responsibility of each supervisor or manager to review and be familiar with their employee's respective Memorandum of Understanding. CDCR will continue to outline performance expectations to managers and supervisors and send out reminders to obtain these reports in a timely manner. CDCR Human Resources will run a report monthly to determine which probationary reports are delinquent and send out reminders to supervisors and managers of their responsibility to complete these reports.

Finding 5: Appointment Documentation Was Not Kept for the Appropriate Amount of Time

During the SPB audit it was learned that 19 Notice of Personnel Action (NOPA) forms and 2 duty statements (out of 108 appointments reviewed), were not being retained in the Official Personnel Files (OPFs) for employees. CDCR understands the importance of this error and will provide training to supervisors and managers who work in Human Resources. In addition, CDCR will begin performing regular reviews of the OPFs to ensure these files retain correct information and any missing information is retrieved.

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Finding 6: Complainants Were Not Notified of the Reasons for Delays in Decisions Within the Prescribed Time Period

The CDCR implemented a revised complaint process in mid-2018. However, the practice of notifying the employee after a delay was encountered was inadvertently missing from CDCR's revised complaint process. CDCR is rectifying this issue by updating this process to include sending written notice to complainants including the reason(s) for the delay. Additionally, training will be provided to Equal Employment Opportunity staff on the revised complaint process to prevent this issue from occurring in the future.

Finding 7: Unions Were Not Notified of Personal Services Contracts

During the audit, it was found that in one instance Contracts Management did not notify the union related to personal services contracts. During CDCR's inquiry into how this occurred, it was learned this omission was an oversight by the respective analyst. Training has been provided to the analysts and managers to ensure they are following the Contracting-Out Notification Guidelines. In addition, training will continue be provided to ensure the supervisors and managers are more diligent to review this item in their contract reviews and approval processes.

Finding 8: Ethics Training Was Not Provided for All Filers

The audit identified that some CDCR employees had not received the required ethics training. CDCR implemented electronic Ethics training in February 2020, which has greatly improved tracking and compliance for the majority of annual training. However, it was learned that new CDCR filers are not receiving notice to complete their ethics training timely. CDCR will run reports quarterly to determine who should be added to this training module to prevent future occurrences of this issue.

Finding 9: Sexual Harassment Prevention Training Was Not Provided for All Supervisors

As a result of an IT interfacing issue with CDCR's Learning Management System and Business Information System (BIS), the Sexual Harassment Prevention Training was not accurately reported. Individuals that were reported as delinquent for the training, had actually taken the training. In addition, 131 of 1,741 new supervisors did not take this training within 6 months of their appointment. Also, CDCR did not provide sexual harassment prevention training to 249 of 1,114 existing supervisors every two years. CDCR Enterprise Information System is working with Human Resources and Peace Officer Selection and Employee Development to address this issue to preclude it from occurring in the future.

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Finding 10: Salary Determinations Complied With Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found no deficiencies in the salary determinations that were reviewed. The CDCR appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Finding 11: Alternate Range Movements Did Not Comply with Civil Service Laws, Rules, and CalHR Policies and Guidelines

It was discovered through the SPB audit there were four occurrences (out of 36 reviews) of personnel staff making errors while entering range changes when calculating the salary and anniversary dates. In one instance, an incorrect interpretation of the salary rule, was applied. Training will be provided to staff and supervisors/managers. In addition, supervisors will be required to routinely review transactions made by their staff to catch any errors timely and to provide additional training if needed.

Finding 12: Hire Above Minimum Requests Complied With Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

The CRU found that the Hiring Above Minimum requests the CDCR made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Finding 13: Incorrect Authorization of Bilingual Pay

Through the SPB audit of bilingual pay for the period of December 1, 2019 through May 31, 2019, it was discovered that two employees did not have the bilingual certification to specify that 10 percent of the duties included bilingual services. An additional 13 employees audited did not have their bilingual certification examination on file. In May 2020, CDCR updated the bilingual pay procedures, which had not been updated since July 2005. In addition, training will be provided to new personnel staff.

Finding 14: Incorrect Authorization of Pay Differentials

Through the SPB audit it was identified that the dates for two employees were miscalculated. In addition, CDCR verifies documentation prior to keying pay differentials, but did not retain the documentation appropriately. Training will be provided to staff and managers to prevent this issue from occurring. Additionally, supervisors will be implementing peer reviews prior to keying differentials and conducting audits to identify if these types of errors are continuing to occur.

Suzanne M. Ambrose, Executive Officer

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Finding 15: Incorrect Authorization of Out-of-Class Pay

Personnel staff inadvertently miscalculated employee salaries for 2 of the 9 out-of-class pay assignments reviewed. CDCR is conducting salary determination training which includes determining salaries for out of class assignments. Additionally, supervisors will implement peer reviews prior to keying out-of-class pay and audit these types of positions to ensure the pay has been calculated appropriately.

Finding 16: Positive Paid Employees Exceeded the Nine Month Limitation in Any Twelve Consecutive Month Period

Through the SPB audit it was learned that 2 of 50 temporary appointments exceeded the 1,500-hour/194-day limitation. It was discovered that personnel staff tracked calendar months rather than consecutive months. Management will ensure procedures are updated and training will be given to include directions on how to properly track positive pay work hour limitations.

Finding 17: Department Did Not Properly Monitor Time Worked for All Positive Paid Employees

Retired annuitant hour miscalculations were due to inadvertent payment of holiday hours for one employee, and a scheduling error in another. Permanent Intermittent (PI) Correctional Officers were inadvertently overscheduled. This occurred in 2 of 50 positive pay employees reviewed and 9 of the 50 PI Correctional Officers exceeded the 2,000-hour limitation. Training will be provided to ensure personnel staff and supervisors/managers are aware of tracking hours appropriately. In addition, the BIS-SAP team will be updating the system to prevent scheduling of the PI Officers beyond the 2,000-hour limitation.

Finding 18: Positive Paid Employees' Time and Attendance Records Were Not Properly Retained and/or Documented

CDCR was made aware from the SPB audit that attendance records for 7 of 50 employees were missing a total of 34 timesheets. In addition, records were not thoroughly reviewed for errors on positive pay employees. CDCR is in the initial phase of electronic timesheets using DocuSign. This program will retain timesheets for employees.

Finding 19: Administrative Time Off Was Not Properly Documented

It was discovered through the SPB audit that there were instances of delays in the timely approval prior to directing Administrative Time Off (ATO). Specifically, 16 out of 50 employees were given ATO beyond 30 days without approval from CalHR. Procedures will be implemented and training will be provided to personnel employees and supervisors/managers. In addition, HR is working towards implementing an ATO Coordinator to track and initiate timely requests for extensions of ATO to ensure a single point of contact and tracking.

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Finding 20: Leave Activity and Correction Certification Forms Were Not Completed For All Leave Records Reviewed

During the recent SPB audit, a review of December 2019 timesheets was performed for one unit of both Headquarters and Pelican Bay State Prison. The review was specifically to check if CDCR was following the CalHR process for additional personnel review for the accurate and timely leave account records of inputting timesheets, with a correction certification form. CDCR did not send out the revised procedures until April 2020. Human Resources has provided training and will continue to monitor this area to ensure compliance.

Finding 21: Incorrect Application of State Service and Leave Transactions

It was identified in the SPB audit that CDCR personnel staff made 5 errors in 50 transactions with leave accrual and state service corrections when keying retroactive transactions. Training will be provided to personnel employees and supervisors/managers to prevent this from occurring in the future. Additionally, supervisors will be implementing peer reviews prior to keying retroactive transactions and conducting audits to identify if these types of errors are continuing to occur.

Finding 22: Nepotism Policy Complied With Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the policy was disseminated to all staff and emphasized the CDCR's commitment to the state policy of recruiting, hiring and assigning employees on the basis of merit. Additionally, the CDCR's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

Finding 23: Workers' Compensation Process Complied With Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines

The CRU verified that the CDCR provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the CDCR received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Finding 24: Performance Appraisals Were Not Provided Timely to All Employees

It was identified in the SPB audit that CDCR did not provide an annual performance appraisal to 128 of 160 employees reviewed, and did not provide performance appraisals in a timely manner to 13 of 160 employees reviewed. Managers and supervisors are responsible for providing performance appraisals for their respective staff. This requirement is outlined in the Basic and

Suzanne M. Ambrose, Executive Officer

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Advanced Supervision Training modules provided to newly-appointed first and second-line managers and supervisors. CDCR will conduct bi-yearly audits and send reminders to supervisors/managers to complete these appraisals.

CDCR would like to thank SPB for their audit and response and can address any additional questions following this memo. If you have further questions, please contact Janine Seyler, Assistant Chief, Office of Personnel Services, at (916) 445-5777.

Sincerely,

DocuSigned by:

4BE5E58378FF4AF...

JENNIFER BARRETTO

Undersecretary of Administration

cc: Stacy Lopez, Director, Administrative Services

Amy Miller, Director, Division of Correctional Policy Research and Internal Oversight

Marc Wilson, Deputy Director (A), Audits and Court Compliance

Devin Fong, Deputy Director, Business Services

AnneMarie Del Mugnaio, Deputy Director, Peace Officer Selection and Employee Development

Ricardo DeLaCruz, Associate Director, Human Resources

Sarina Calderon, Associate Director, Office of Civil Rights Operations

Samantha Kissane, Chief, Office of Personnel Services

Candace Murch, Chief, Office of Labor Relations

Bedeth Victorioso, Chief, Contracts Management Branch

Janine Seyler, Assistant Chief, Office of Personnel Services